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### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92025859
Party	Plaintiff Empresa Cubana Del Tabaco d.b.a Cubatabaco
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### IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Registration No. 1147309 For the mark COHIBA Date registered: February 17, 1981

AND

# PETITIONER'S MOTION TO EXCLUDE RESPONDENT'S SUPPLEMENTAL EXPERT REPORT AND RELATED TRIAL TESTIMONY OR, IN THE ALTERNATIVE, TO RE-OPEN DISCOVERY CONCERNING THE SUPPLEMENTAL EXPERT REPORT

Petitioner *Empresa Cubana del Tabaco dba Cubatabaco* ("Petitioner") respectfully moves the Board, pursuant to Rule 37 of the Federal Rules of Civil Procedure and TBMP §§ 401.03, 527.03, for an Order excluding the Supplemental Expert Report of General Cigar Co., Inc. ("Respondent")'s purported expert, Richard Carleton Hacker ("Hacker"), and any trial testimony by Hacker related to same.

In the alternative, if the Board denies this motion to exclude, Petitioner moves the Board to: re-open discovery for three (3) months to allow Petitioner to take discovery concerning the bases of the Supplemental Expert Report and a discovery deposition of Hacker on that Supplemental Expert Report; and suspend proceedings until completion of same.

#### **INTRODUCTION**

On December 30, 2019: almost fifteen (15) months after the trial in this proceeding began; three (3) months after Petitioner's testimonial period had ended; and two and a half (2.5) years after Respondent produced Hacker's original May 2017 Expert Report and Petitioner deposed Hacker on same, Respondent surprisingly and untimely produced a Supplemental Expert Report by Hacker. This Supplemental Expert Report, *inter alia*:

• Dedicates six (6) out of its thirteen (13) substantive paragraphs to the role of cigar podcasts in consumer confusion even though: Hacker never mentioned cigar podcasts in his original 2017 Expert Report; and cigar podcasts, including those that Hacker cites in his Supplemental Expert Report, predate his 2017 Expert Report by at least seven (7) years.

He specifically alleges that "U.S. podcast ... listeners" "already know that Cuban and non-Cuban cigars are completely different, that they are made in different countries, that Cuban cigars cannot be sold in the U.S., that Cuban and non-Cuban cigars smoke (i.e. taste) differently, and that there is no relationship between Cuban and non-Cuban cigars" and that "[t]hese cigar-related podcasts have only solidified the already-existing knowledge among American cigar smokers that the Cuban Cohiba and the non-Cuban Cohiba cigars are completely different from one another." Supplemental Expert Report, at ¶¶ 11-12.

The cigar podcasts Hacker cites to in his Supplemental Expert Report consist of literally thousands of hours of audio and video recordings, most of which predate the 2017 Expert Report.

• Includes a new and previously undisclosed opinion that "cigar publications have ... continued to confirm that premium cigar consumers are well-educated and sophisticated about the cigars they purchase and smoke." Supplemental Expert Report, at ¶ 14.

Hacker's 2017 Expert Report did not cite to or rely on 'cigar publications' as evidence confirming that cigar consumers are well-educated and sophisticated about the cigar they purchase and smoke, even though cigar publications existed at the time of his original 2017 Expert Report and he cited publications more generally to support another allegation in his 2017 Expert Report.

Respondent's extremely late filing of this Supplemental Expert Report has seriously and impossibly prejudiced Petitioner and any attempt to rectify this prejudice – which would require (i) additional discovery, (ii) time to assess how to respond to Hacker's citation to thousands of hours of audio recordings and (iii) a discovery deposition of Hacker on the Supplemental Expert

Report – would cause significant and undue delay in the trial.

In addition, even if its untimeliness were not extremely prejudicial, the Supplemental Expert Report itself is an improper supplementation. It purports to provide new examples and illustrations to bolster the opinions in his 2017 Expert Report and to add a new opinion, both of which are clearly prohibited by the Board's precedential decision in *Gemological Inst. of Am., Inc.* v. *Gemology Headquarters Int'l, LLC*, 111 U.S.P.Q.2d 1559 (T.T.A.B. 2014) and the TBMP.

Respondent argued to Petitioner prior to submission of this Motion that its production of the Supplemental Expert Report on December 30, 2019 – which was after Petitioner's trial testimonial period had ended – is proper because the Board's determination of likelihood of confusion is based on the factual situation at the time of trial and more than two years had passed since Hacker's 2017 Expert Report. If this were a sufficient justification, it would mean that respondents in all TTAB proceedings could file supplemental expert reports where at least two years, or potentially even less time, had passed between the filing of the initial expert report and respondent's testimonial period. Such a scenario would totally defeat the very purpose of expert disclosures which is to lock the expert into a complete statement of all opinions to be expressed and the bases for same before trial so that the opposing party knows exactly what it is facing and can prepare its own case in chief, in addition to preparing for cross-examination and possible rebuttal.

Even though it may be true that an expert can, up until the time of trial, supplement his or her expert disclosures with certain additional information not in existence at the time of the original expert report, which is <u>not</u> the case here, Respondent can come forward with no legitimate reason: why it did not disclose this Supplemental Expert Report before the close of discovery on August 6, 2018 or, at least, by <u>the start</u> of trial on September 6, 2018; or why two years would be the

relevant period.

In sum, Respondent has no right to file this as a supplemental report under any circumstances and, in any event, if it did have such a right, it slept on that right for too long. To permit it to introduce this expert evidence now, at such a late stage, would be fundamentally unfair.

The undersigned counsel declares that the factual statements in this Motion are true and correct.

#### PROCEDURAL HISTORY AND STATEMENT OF THE FACTS

It has been more than five and a half (5.5) years since the U.S. Court of Appeals for the Federal Circuit reversed the Board's decision dismissing this matter on grounds of lack of standing and issue preclusion and remanded the proceeding to the TTAB for further proceedings. That Federal Circuit decision was itself issued more than four (4) years after the conclusion of the litigation between the Parties in federal court, *Empresa Cubana del Tabaco v. Culbro Corp.*, 97 Civ. 8399 (S.D.N.Y.) ("Federal Action"), which had suspended this proceeding since 1997.

Now, this proceeding is finally almost at the end of the trial, with Petitioner's testimonial period having closed and sixteen (16) days remaining in Respondent's testimonial period.

#### a. Procedural History

In January 1997, Petitioner filed an application in the USPTO to register COHIBA for cigars and related goods on the basis of its Cuban registration, and a petition to cancel Respondent's two registrations for COHIBA for cigars (Reg. Nos. 1147309, issued on February 17, 1981, and 1898273, issued on June 6, 1995), which the PTO has cited against Petitioner's application as likely to cause confusion.

#### i. The Federal Action

The cancellation proceeding was suspended on January 28, 1998, pending the outcome of

the Federal Action. 15 TTABVUE.

After a lengthy bench trial that concluded in June 2003, the District Court enjoined Respondent's use of the mark, and cancelled its registrations. *Empresa Cubana del Tabaco v. Culbro Corp.*, 2004 WL 925647 (S.D.N.Y. April 30, 2004). The court found, *inter alia*, that:

- Respondent had abandoned its first registration and use of the COHIBA mark for cigars;
- the Cuban COHIBA was well-known among U.S. cigar consumers prior to Respondent's late 1992 application for registration and use of the mark (after a long period of abandonment), giving Petitioner priority under the well-known marks doctrine;
- Respondent had intentionally copied the mark to exploit the fame of the Cuban COHIBA; and
- there was a likelihood of confusion between the COHIBA marks.

Empresa Cubana del Tabaco v. Culbro Corp., 70 U.S.P.Q.2d 1650 (S.D.N.Y. 2004).

Without reaching the merits of the District Court's factual findings or legal holdings, the U.S. Court of Appeals for the Second Circuit reversed and vacated the District Court's judgment on the basis of the Cuban Assets Control Regulations ("CACR," 31 C.F.R. Part 515). *Empresa Cubana del Tabaco v. Culbro Corp.*, 399 F.3d 462, 476-77 (2d Cir. 2005). The Supreme Court denied Petitioner's petition for a writ of *certiorari* on June 26, 2006. *Empresa Cubana*, 547 U.S. 1205 (2006).

After the Supreme Court's denial of *certiorari*, Respondent moved the District Court to mandate dismissal of Petitioner's TTAB cancellation petition and denial of Petitioner's PTO application for registration, but the District Court denied the motion, and the Court of Appeals affirmed its decision. *Empresa Cubana del Tabaco v. Culbro Corp.*, 478 F. Supp. 2d 513, 21-22 (S.D.N.Y. 2007), *aff'd* 541 F.3d 476, 479 (2d Cir. 2008).

On the basis of an intervening New York State Court of Appeals decision, Petitioner moved to vacate the judgment against Petitioner mandated by the U.S. Court of Appeals in its 2005

decision and enter judgment in its favor under the New York state law of unfair competition by misappropriation. The District Court granted the motion but the Court of Appeals reversed without reaching the merits of the District Court's findings that Petitioner had established a claim of unfair competition by misappropriation. Rather, it held that the intervening New York Court of Appeals decision did not alter New York law, or at least not clearly or sufficiently enough so as to justify vacating a previously entered judgment. *Empresa Cubana del Tabaco v. Culbro Corp.*, 385 Fed. Appx. 29, 32 (2d Cir. 2010).

#### ii. Resumption of TTAB Proceedings and Respondent's Purported Expert

Upon resumption of the proceeding before the Board, Respondent filed a motion for summary judgment in 2011 on the grounds of lack of standing and issue preclusion. 64 TTABVUE. The Board granted the motion on March 14, 2013. 75 TTABVUE. In a published opinion in 2014, the U.S. Court of Appeals for the Federal Circuit unanimously reversed the Board's decision and remanded for further proceedings. It held both that Petitioner has standing and a statutory cause of action and "neither issue nor claim preclusion bars the Amended Petition." *Empresa Cubana del Tabaco v. Culbro Corp.*, 753 F. 3d 1270, 1276 (Fed. Cir. 2014); 83 TTABVUE 11. The Supreme Court denied Respondent's petition for a writ of *certiorari* on February 23, 2015. *Empresa Cubana*, 135 S.Ct. 1401 (2015).

On October 28, 2015, the Board vacated its March 14, 2013 order and ordered a resumption of proceedings. 88 TTABVUE.

The Parties engaged in extensive discovery between October 28, 2015 and the close of discovery on August 6, 2018. Respondent produced almost 50,000 pages of documents not included in the Federal Action and Petitioner produced well-over 55,000 pages of documents, not

included in the Federal Action.<sup>1</sup>

All expert disclosures were due by March 15, 2017 and any rebuttal expert disclosures were due by May 31, 2017. 103 TTABVUE 2; 107-08 TTABVUE.

On March 15, 2017, Petitioner informed Respondent that it intended to rely upon the expert testimony presented in the Federal Action, consisting of the expert testimony and reports of Alvin Ossip and Alan Siegel. Respondent took the discovery depositions of both Ossip and Siegel during three days in June 2017.

Respondent served Petitioner with a Report by its purported expert, Hacker, on May 31, 2017 (the "2017 Expert Report") (attached hereto as Annex 1). After requests for discovery related to the 2017 Expert Report and production of same, counsel for Petitioner flew out to California and took an almost seven (7) hour discovery deposition of Hacker on June 15, 2017 ("2017 Deposition").

Hacker is an author of one book as well as articles on cigars, in addition to his publications on pipe smoking and spirits. His 2017 Expert Report, and subsequent Supplemental Expert Report, purport to provide expert testimony on the issue of likelihood of confusion and, in them, he opines that U.S. cigar consumers understand the difference between the General Cigar and Cuban COHIBA cigars and that there is no connection between the two companies that makes these cigars. Hacker does not purport to conduct any scientific sampling of consumer opinions.

On August 4, 2017, Petitioner moved for leave to file additional expert testimony to "address issues raised in Respondent's ... voluminous productions, much of which was produced after the deadline for expert disclosure." 113 TTABVUE 2. Respondent opposed Petitioner's

<sup>&</sup>lt;sup>1</sup> This is in addition to discovery taken in the Federal Action that, by stipulation between the Parties and approved by the Board, shall be treated as discovery already taken in this proceeding. 89 TTABVUE 2; 91 TTABVUE.

motion, alleging that it was based on Petitioner "lack of diligence" and that allowing additional expert testimony in August 2017 "would not be harmless: it would require new rebuttal reports and new depositions, which would mean further delay, inconvenience, schedule disruption and expense." 117 TTABVUE 5-6. The Board denied Petitioner's motion on December 29, 2017. 122 TTABVUE.

Discovery in this proceeding closed on August 6, 2018. 131 TTABVUE.

Petitioner's trial testimonial period opened on October 6, 2018, almost fifteen (15) months before Respondent produced the Supplemental Expert Report. *Id.* Petitioner's testimonial period was suspended between October 22, 2018 and June 14, 2019 because of Respondent's motion to orally cross-examine Petitioner's foreign witnesses, which the Board denied. 156 TTABVUE. Proceedings were subsequently suspended until September 6, 2019 to allow Respondent to cross-examine Petitioner's foreign witnesses on written questions. Petitioner's trial testimonial period closed on September 16, 2019. 156 TTABVUE.

Respondent's Pretrial Disclosures were due on December 30, 2019. 241 TTABVUE.

On December 30, 2019, Respondent served both the Supplemental Expert Report (hereinafter, at times, "SER") (attached as Annex 2) and its Pretrial Disclosures on Petitioner.

Respondent's Trial Testimonial Period opened on January 15, 2020. 241 TTABVUE.

This proceeding was suspended on January 29, 2020, after the Parties' joint telephone conference with the Interlocutory Attorney on January 28, 2020. 243 TTABVUE.

As required by Fed. R. Civ. P. 37(a)(1) and TTAB Rule § 2.120(f)(1), counsel for Petitioner has made a good-faith effort to confer with counsel for Respondent to resolve the issues presented in this Motion without the need for action by the Board but has been unable to reach agreement.<sup>2</sup>

<sup>&</sup>lt;sup>2</sup> In between January 8 and 23, 2020, the Parties exchanged various communications to try to resolve the issues addressed herein without a motion, but were not able to come to an agreement.

#### **ARGUMENT**

#### **SUMMARY**

The Supplemental Expert Report and any testimony related to same should be excluded for two reasons, each as set forth more fully below.

First, Respondent's extremely late filing of the SER is highly prejudicial to Petitioner and will cause significant and undue delay in the trial. It should, therefore, be excluded under either Fed. R. Civ. P. 37(c)(1) or the Board's inherent authority to sanction to achieve the orderly and expeditious disposition of cases. *See* TBMP § 527.03.

Second, even if Respondent's filing of the SER were not extremely late and highly prejudicial, the SER is itself an improper supplementation under the Board's clear precedent set forth in *Gemological Inst. of Am., Inc. v. Gemology Headquarters Int'l, LLC*, 111 U.S.P.Q.2d 1559 (T.T.A.B. 2014) and the TBMP.

1. In addition to Respondent's failure to adhere to the Board's timing requirements for supplementing expert disclosures,<sup>3</sup> its "late disclosure of expert witness statements, long after the opposing party would have had an opportunity to depose the declarant on the contents of the

<sup>&</sup>lt;sup>3</sup> The SER is untimely because it was filed on the same day that Respondent's pretrial disclosures were due. A "party may supplement both information included in the expert report and information given during the expert's deposition before the time the party's pretrial disclosures under [Fed. R. Civ. P.] Rule 26(a)(3) are due" Entravision Commc'ns Corp. v. Liberman Television LLC, 113 U.S.P.Q.2d 1526, 1528 at n.5 (T.T.A.B. 2015) (emphasis added); TBMP § 401.03 ("party may supplement or correct information included in an expert report and information given in the expert's deposition testimony before a party's pretrial disclosures are due.") (emphasis added). "Before" means 'the day before' a party's pretrial disclosures were due. See KID-Systeme GmbH v. Türk Hava Yollari Teknik Anonim Sirketi, 125 U.S.P.Q.2d 1415, 1416 (T.T.A.B. 2018) (making clear that term "prior to" used in Board's pre-2017 rule regarding timing of summary judgment motions "means the day before the deadline.") The Board uses the terms "before" and "prior to" interchangeably with respect to a party's duty to supplement under Fed. R. Civ. P. 26(e)(2). See, e.g., Entravision, 113 U.S.P.Q.2d at 1528 at n.5 (using both terms "before" and "prior to" to describe a party's duty to supplement under Fed. R. Civ. P. 26(e)(2)).

The Supplemental Expert Report is also untimely because it failed to provide four (4) of the six (6) pieces of information required by Fed. R. Civ. P. 26(a)(2)(B); see Letter from Respondent's counsel to Petitioner's counsel, dated Feb. 3, 2020 ("Feb. 3 Letter") (belatedly providing this information).

statement," as is the case here, "nullifies the very purpose of Rule 26(a)(2)(B)." *Gemological Inst.*, 111 U.S.P.Q.2d. at 1561-62 (internal citations omitted).

The purpose of expert disclosures under Rule 26(a)(2)(B) is to prevent unfair surprise at trial, to allow the opposing party to depose the expert in advance of trial on all of the bases of his or her opinions, and to "lock[] the expert witness into . . . a complete statement of all opinions to be expressed and the basis and reasons therefor" so that "the opposing party knows exactly what [the opposing party] is facing" and can properly prepare its own case in chief as well as its cross-examination. *Gemological Institute*, 111 U.S.P.Q.2d. at 1561-62 (*quoting Coles v. Perry*, 217 F.R.D. 1, 4 (D.D.C. 2003); internal quotations omitted); *see also See Newegg Inc. v. Schoolhouse Outfitters, LLC*, 118 U.S.P.Q.2d 1242, 2015 WL 9906628, at \*2 (T.T.A.B. July 16, 2015) ("The expert disclosure requirement is intended to avoid unfair surprise during the testimony period.") (*citing Spier Wines (PTY) Ltd. v. Shepher*, 105 U.S.P.Q.2d 1239, 1246 (T.T.A.B. 2012)).

To this end, the Fed. R. Civ. P. and Board precedent provide that Respondent is not allowed to use the Supplemental Expert Report unless Respondent's failure to timely produce it "was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1). To guide its determination of whether the failure was substantially justified or harmless, the Board considers (i) the surprise to the party against whom the evidence would be offered, (ii) the ability of the offering party to cure this surprise by, for example, allowing discovery and a discovery deposition if discovery is still open, and (iii) the extent to which curing the surprise and allowing the testimony would disrupt the trial, among other factors. *Entravision*, 113 U.S.P.Q.2d at 1528. Each of these considerations strongly favors grant of this Motion.<sup>4</sup>

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<sup>&</sup>lt;sup>4</sup> These considerations are a balancing test; so Petitioner need not establish that all considerations have been met, nor must it show that any one particular consideration is met. *See Newegg*, 2015 WL 9906628, at \*3.

The Board also has the authority to exclude the SER and any testimony related to same under its inherent authority to sanction to achieve the orderly and expeditious disposition of cases. See TBMP § 527.03.

2. Even if Respondent's filing of the SER were not extremely late and highly prejudicial, the Supplemental Expert Report is also itself an improper supplementation.

As the Federal Rules of Civil Procedure, the TBMP and the Board's precedent make clear, "[a] supplemental report which ... provides new examples and illustrations to bolster [the expert's earlier opinions] is not proper supplementation." *Gemological Inst.*, 111 U.S.P.Q.2d at 1562 (internal citations omitted); *see also* TBMP § 401.03 ("Fed. R. Civ. P. 26(e) ... does not allow an expert to bolster previously disclosed opinions or to add new opinions.")

This is exactly what the Supplemental Expert Report attempts to do, as shown more fully below, by including "additional facts ... which support [Hacker's] opinions" in his 2017 Expert Report. SER, at ¶ 3; see also id., at ¶ 7 (identifying cigar podcasts as "an additional source of information for U.S. cigar consumers"); Letter from Respondent's counsel to Petitioner's counsel, dated Jan. 11, 2020 ("Jan. 11 Letter") (describing SER as including "additional facts which have arisen or come to the attention of Hacker after May 31, 2017"; "additional sources of information available to premium cigar consumers that occurred or became known to Hacker after the date of his Original Expert Report"; and "later or newly-discovered information that supports Mr. Hacker's original opinions") (emphasis added).

- I. The Supplemental Expert Report and Testimony Related to Same Should Be Excluded Because Its Late Filing Was Extremely Prejudicial and Any Attempt to Rectify Would Cause Significant and Undue Delay in the Trial
- A. <u>Hacker's Inclusion of Additional Facts in his Supplemental Expert Report Both Surprised Petitioner and Was Improper</u>

The SER included both (i) a previously undisclosed "additional source of information,"

SER, at ¶ 7, that existed before the 2017 Expert Report but "became known to Mr. Hacker after the date of his" 2017 Expert Report, Jan. 11 Letter, at 2, and (ii) a new opinion, SER, at ¶ 14. The SER also included other "additional facts" previously undisclosed to Petitioner. Jan. 11 Letter, at 1. This both caused Petitioner significant surprise, as described immediately below, and constituted an improper supplementation. *See infra* Point II.

Petitioner expended considerable resources to depose Hacker back in June 2017 and prepare its case in chief on the basis of his original 2017 Expert Report and 2017 Deposition testimony.<sup>5</sup> Respondent's extremely late production of the SER has prevented Petitioner from being able to investigate and produce evidence to counter the points raised in the SER in its case in chief. *See, e.g., Newegg Inc.*, 2015 WL 9906628, at \* 3 (not allowing opposer's untimely expert testimony in connection with applicant's summary judgment motion because discovery had closed and motion already filed by time opposer presented its expert report; applicant, therefore, "had no opportunity to respond.")

Hacker spends six (6) of the thirteen (13) substantive paragraphs of his SER making assertions about cigar podcasts. *See* SER, at ¶¶ 7-12.6 Yet, nowhere in his 2017 Expert Report or his 2017 Deposition did Hacker mention cigar podcasts at all, much less that they are a "popular[]" "source of information for U.S. cigar consumers" or that "U.S. podcast … listeners" "already know that Cuban and non-Cuban cigars are completely different, that they are made in different

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<sup>&</sup>lt;sup>5</sup> For example, Hacker alleged in his 2017 Expert Report that as a "result of the technological advances" "today's cigar smokers and potential cigar smokers are much more sophisticated and informed regarding their knowledge of the products that they use," citing to the advent computers, smartphones, iPads and cigar apps. 2017 Expert Report at ¶¶ 14-15, 19. Petitioner gathered and presented substantial evidence during its testimonial period to show how the information on the internet and cigar apps only reinforces consumer confusion between the General Cigar and Cuban COHIBA cigars. *See, as just a small sample, e.g., infra* at p.16 (Petitioner's trial evidence regarding <u>Cigar Boss</u> app); 217 TTABVUE 29-33, 393-432 (Petitioner's evidence: six online articles that include references to the Cuban COHIBA cigar with the word "Cohiba" in the article hyperlinked to the website for the General Cigar COHIBA cigar).

<sup>6</sup> The first four (4) paragraphs of his SER are introductory and background statements. *See* SER, at ¶¶ 1-4.

countries, that Cuban cigars cannot be sold in the U.S., that Cuban and non-Cuban cigars smoke (i.e. taste) differently, and that there is no relationship between Cuban and non-Cuban cigars," as he subsequently did in his Supplemental Expert Report. SER, at ¶¶ 7, 11.

Most strikingly, information about cigar podcasts was available to Hacker in May 2017 when he wrote his 2017 Expert Report and was subsequently deposed in June 2017. Indeed, the majority of the podcasts that Hacker cites to in his Supplemental Expert Report, *see* SER ¶ 7, predate his original Expert Report by many years. *See* The Cigar Authority, *available at* <a href="https://thecigarauthority.podbean.com/2010/06/">https://thecigarauthority.podbean.com/2010/06/</a> (podcasts broadcasted since at least June 2010); Stogie Geeks, *available at* <a href="https://stogiegeeks.com/page/61">https://stogiegeeks.com/page/61</a> (podcasts broadcasted since October 2011); Cigar Nerds *available at* <a href="https://cigarnerdpodcast.com/">https://cigarnerdpodcast.com/</a> (podcasts broadcasted since September 2014); and The Retrohale, *available at* <a href="https://theretrohale.libsyn.com/page/10/size/25">https://theretrohale.libsyn.com/page/10/size/25</a> (podcasts broadcasted since June 5, 2015).

In addition, Hacker adds a new opinion in his Supplemental Expert Report. He asserts that that "cigar publications have ... continued to confirm that premium cigar consumers are well-educated and sophisticated about the cigars they purchase and smoke." SER, at ¶ 14.

Whereas Hacker does allege in his 2017 Expert Report that cigar smokers are "much more sophisticated and informed regarding their knowledge of the products that they use," 2017 Expert Report, at ¶ 14, citing to "rapid advancements in personal communications," "the internet," *id.*, and his conversations with cigar consumers, *id.* at ¶ 17, he does not cite to, or rely on, cigar publications specifically to support this claim, even though cigar publications clearly existed at the time and he cited publications more generally to support another allegation in his 2017 Expert Report. *See id.* at ¶ 25 ("publications, including my own, ... spotlight the fact that [the General Cigar and Cuban COHIBA] cigars are different").

Hacker's failure to include this information in his 2017 Expert Report is consistent with his overall failure to conduct the due diligence required of expert witnesses. For example, in the 2017 Expert Report, Hacker stated that cigar consumers are better informed because of their use of mobile 'smartphones' and cigar apps, citing to three examples of such cigar apps, *see* 2017 Expert Report, at ¶¶ 14-15, 19; however, Hacker admitted in his discovery deposition in June 2017 that he had never visited any of the cigar apps he cited in his report and he didn't even have a smart phone. *See* Deposition of Richard Carleton Hacker, taken on June 15, 2017, at 34:15-24.

Fed. R. Civ. P. 26(a)(2)(B) requires each party intending to use an expert to disclose, *inter alia*, "a complete statement of all opinions the [expert] witness will express and the basis and reasons for them; [and] ... the facts or data considered by the witness in forming them"). Respondent and Hacker clearly failed to satisfy this requirement causing Petitioner significant surprise.

B. Respondent Cannot Cure This Surprise Because Respondent Produced the Supplemental Expert Report Almost Seventeen Months After Discovery Closed and Almost Fifteen Months After the Trial Began. Any Attempt to Rectify Would Cause Significant and Undue Delay to the Trail.

Respondent cannot now cure this surprise because discovery closed more than 17 months ago and Petitioner's testimonial period is now closed. "[P]rejudice may arise when a party is surprised with ... new subject matter after the deadlines for discovery have passed." *Entravision*, 111 U.S.P.Q.2d at 1528 (internal quotation and citation omitted).

Any attempt to rectify this prejudice would cause significant and undue delay in the trial. It would require adding months of additional time to this proceeding to re-open discovery to: allow Petitioner to seek, review and assess how to respond to the large collection of new material that form the basis of Hacker's SER; and then take a discovery deposition of Hacker on the SER in advance of his trial examination. *See MicroStrategy, Inc. v. Business Objects, S.A.*, 429 F.3d 1344,

1357, 77 U.S.P.Q.2d 1001, 1009-10 (Fed. Cir. 2005) (testimony excluded when presented "on the eve of trial"; other party "could not cure the surprise without postponing trial and reopening discovery"). Petitioner is entitled to take a discovery deposition of Hacker concerning the SER under Fed. R. Civ. P. 26(b)(4)(A). See Fed. R. Civ. P. 26(b)(4)(A) ("A party may depose any person who has been identified as an expert whose opinions may be presented at trial. If Rule 26(a)(2)(B) requires a report from the expert, the deposition may be conducted only after the report is provided.")

As an example of the massive amount of new material Hacker cites to in the SER, Hacker makes broad statements about the role of cigar podcasts in consumer confusion, *see supra* at pp. 2, 12, and identifies <u>The Retrohale</u>, <u>The Cigar Authority</u>, <u>Cigar Hacks</u>, <u>Stogie Geeks</u>, <u>Cigar Talk</u>, <u>Cigar Snob</u> and <u>Cigar Nerds</u> as seven (7) of "the better-known podcasts." SER, at ¶ 7.

These seven (7) podcasts consist of well over 1,000 episodes, each of which we believe lasts 1-2 hours, for a total of 1,000 to 2,000 hours or more of podcasts. It would take a person many months to listen to that amount of material and evaluate Hacker's assertions in light of same.

Petitioner has good reason to suspect that Hacker's statements concerning podcasts, just like his statements concerning other topics, are unreliable and that these podcasts may, in fact, controvert Hacker's broad assertion. Petitioner's independent investigation prior to its case in chief concerning Hacker's statement in his 2017 Expert Report that cigar consumers are better informed because of their use of cigar apps revealed that at least one of these cigar apps propagated misinformation and confusion concerning the General Cigar and the Cuban COHIBA cigars, rather than better informing cigar consumers. 217 TTABVUE 84-89 (Petitioner's trial evidence: numerous entries for "Cohiba" under "Cuban Cigars" category in Cigar Boss cigar app begin description of these cigars as the "highly-rated Cohiba Red Dot Tube [General Cigar uses a red

dot on its COHIBA cigars] take the smooth Dominican cigar profile and raises the bar" and identify the "Country" of these cigars as "Dominican Republic" where only Respondent produces its COHIBA cigars).

Petitioner would also need to be able to obtain discovery and probe Hacker during a new discovery deposition, on all of the other statements included in his Supplemental Expert Report, including, without limitation, his allegation that: he met with "many premium cigar smokers [since May 2017] and ha[s] engaged in many discussions with those smokers concerning both Cuban and non-Cuban cigars," SER, at ¶ 5; "No one I have met with during this time [since May 2017] has expressed any confusion to me between the General Cigar non-Cuban Cohiba cigar and the Cuban Cohiba cigar," *id.*; that "premium cigar consumers continue to be increasingly better informed about cigars." *Id.* at ¶ 6

Out of an abundance of caution, Petitioner requested the information and documents it would need to prepare to examine Hacker in a new discovery deposition, if the instant request to exclude were denied; however, Respondent has refused to produce any of these documents and much of the information requested. For example, Respondent has not: produced any documents concerning Hacker's interactions, discussions and communications with consumers, cigar smokers, or tobacconists since May 31, 2017; identified the conferences, workshops and other events related to cigars that Hacker attended or participated in since May 31, 2017, if any; or produced Hacker's calendars, diaries and similar materials (whether digital or paper) since May 31, 2017 in which Hacker or his assistants recorded or noted Hacker's appointments, events he attended or was to attend, and his activities. Respondent produced similar materials prior to the 2017 Deposition, providing Petitioner with over 7,000 pages of documents.

Respondent has also failed to identify which of specific podcasts or cigar articles he

considered – out of the massive universe of podcasts and cigar articles – in forming his purportedly expert opinions.<sup>7</sup>

Any claim now by Respondent that discovery can be re-opened without delaying the trial is disingenuous. Respondent successfully argued exactly the opposite <u>more than two (2) years ago</u> in opposing Petitioner's motion to allow expert testimony <u>while discovery was still open</u>. *See supra* at p.7.

C. There Is No Reasonable Explanation for Respondent's Delay and, In Any Event, Hacker's Assertions Are Additional and Not Trustworthy

Respondent has not come forward with any reasonable explanation for why it did not produce the SER sooner.

The SER includes information about podcasts and a new opinion about the role of cigar publications both of which were available to Hacker at the time of his 2017 Expert Report, but which he did not include in the 2017 Expert Report. *See supra* at p.2. The fact that they did not "come to the attention" of Hacker or did not "bec[o]me known" to him until after his 2017 Expert Report, *see supra* at p.11, cannot be a reasonable explanation.

If Respondent's argument were true that the SER should be allowed because likelihood of

<sup>&</sup>lt;sup>7</sup> Petitioner requested, *inter alia*, that Respondent: (1) identify and produce all podcasts that Hacker listened to or watched in the course of preparing his Supplemental Expert Report, if any, and identify which portions of these podcasts Hacker listened to or watched; (2) produce all documents and communications regarding eigar podcasts in Hacker's possession, custody or control; and (3) produce all notes or recordings of, memoranda and other documents concerning Hacker's interactions, discussions and communications with podcast listeners or, if there is no such material, to please so state. On February 3, 2020, Respondent responded to this request but refused to provide these documents and information alleging that Petitioner "is not entitled to most of these materials under the Federal Rules of Civil Procedure." Feb. 3 Letter, at 2.

Petitioner also requested that Respondent produce all documents that Hacker considered in forming the opinions expressed in his Supplemental Expert Report. While Respondent's Feb. 3 Letter identified the website addresses of two cigar publications that Hacker "considered," Respondent failed to identify which specific articles he considered in forming his opinion, for example, that "cigar publications have ... continued to confirm that premium cigar consumers are well-educated and sophisticated about the cigars they purchase and smoke." SER, at ¶ 14; see also Feb. 3 Letter.

confusion is assessed at the time of trial and more than two years had passed since Hacker's 2017 Expert Report, that would totally defeat the very purpose of expert disclosures which is to lock the expert into a complete statement of all opinions to be expressed and bases for same before trial so that the opposing party knows exactly what it is facing when preparing its case in chief and for cross-examination and rebuttal. *See supra*, at pp.3, 10.

Even if it were true, Respondent can come forward with no legitimate reason: why it did not disclose this supplemental report before the close of discovery on August 6, 2018 or, at least, by the start of trial on September 6, 2018; or why two years is the relevant period. *See id*.

Any supplementation by Hacker had to have been made "in a timely manner." Fed. R. Civ. P. 26(e)(1). Respondent has not met that standard.

Moreover, the allegations in the Supplemental Expert Report are only "additional facts" and "additional sources." *See supra*, at p.11.

The allegations in the Supplemental Expert Report are also not trustworthy. Hacker describes cigar podcasts as including "call-in listeners who have questions or opinions" and that "not once, in any of my U.S. podcast interviews, has there ever been any confusion expressed by the part of ... the call-in listeners between the Cuban Cohiba and the Dominican and Nicaraguan Cohiba made by General Cigar." SER, at ¶¶ 8, 11. However, Petitioner's counsel has listened to all of the podcasts Respondent's counsel has identified as podcasts in which Hacker appeared and none of them included call-in listeners at all, let alone ones that asked questions about COHIBA cigars. *See also supra*, at p.15 (discussing unreliability statements from Hacker's 2017 Expert Report).

#### II. The Supplemental Expert Report Is Also Improper

As shown above, even if Respondent's filing of the SER were not extremely late and highly prejudicial, the Supplemental Expert Report is also itself an improper supplementation, as it attempts to "provide[] new examples and illustrations to bolster" Hacker's 2017 Expert Report by including "additional facts ... which support [Hacker's] opinions" in his 2017 Expert Report. *Gemological Inst.*, 111 U.S.P.Q.2d at 1562; SER, at ¶ 3; *see also id.* at ¶ 7; Jan. 11 Letter. Such bolstering is not proper supplementation. *See supra*, at p.11.

Further, cigar podcasts, to which Hacker dedicates approximately half of his SER, have existed since well before Hacker's initial report. *See supra*, at p.13. A "party may not utilize Rule 26(e)(1)(A) to sandbag one's opponent or to deepen or strengthen the party's case where the information should have been included in the expert report." *Gemological Inst*, 111 U.S.P.Q.2d at 1562 (internal quotations and citation omitted).

Hacker also, *inter alia*, adds the new example (also a new opinion) that "cigar publications have also continued to confirm that premium cigar consumers are well-educated and sophisticated about the cigars they purchase and smoke," SER, at ¶ 14, and the new example of how "[p]ublished articles also continue to reinforce the fact which, as my original report stated, is already known to almost all premium cigars consumers, namely that the Cohiba cigar sold in the United States by General Cigar using non-Cuban tobacco is not related to the Cuban Cohiba cigar." *Id.* at ¶¶ 15-16.

Although Rule 26(e)(2) does allow an expert the opportunity to correct his or her misleading disclosures, it does not allow supplementation of expert opinions to bolster his or her opinion with new examples, as Hacker does in his Supplemental Expert Report. *See Akeva L.L.C.* v. *Mizuno Corp.*, 212 F.R.D. 306, 310 (M.D.N.C. 2002) (cited by the Board in *Gemological Inst.*) ("Rule 26(e) envisions supplementation when a party's discovery disclosures happen to be

defective in some way so that the disclosure was incorrect or incomplete and, therefore,

misleading."). Hacker nowhere asserts that his 2017 Expert Report was "misleading."

**CONCLUSION** 

For the reasons stated above, Petitioner respectfully requests that the Board grant this

motion and exclude the Supplemental Expert Report and any testimony related to same.

In the alternative, if the Board denies this motion to exclude, Petitioner moves the Board

to: re-open discovery for three (3) months to allow Petitioner to take discovery concerning the

bases of the Supplemental Expert Report and a discovery deposition of Hacker on that

Supplemental Expert Report; and suspend proceedings until completion of same.

Dated: New York, New York February 7, 2020

Respectfully submitted,

By:/Lindsey Frank/

Michael Krinsky

Lindsey Frank

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*Tabaco* 

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#### **CERTIFICATE OF SERVICE**

The undersigned certifies that a true and correct copy of the foregoing PETITIONER'S MOTION TO EXCLUDE RESPONDENT'S SUPPLEMENTAL EXPERT REPORT AND RELATED TRIAL TESTIMONY OR, IN THE ALTERNATIVE, TO RE-OPEN DISCOVERY CONCERNING THE SUPPLEMENTAL EXPERT REPORT was served by email on Respondent on February 7, 2020 to:

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/Lindsey Frank/

# Annex 1

## REPORT OF RICHARD CARLETON HACKER May 31, 2017

- 1. My name is Richard Carleton Hacker. I am an internationally published and recognized book author and magazine writer specializing in cigars, spirits, and related lifestyle topics, including restaurants, destination resorts, and pairing various cigars with whiskies, ports, and cognacs. (See Attachment A, which sets forth my qualifications.)
- 2. Prior to becoming a full-time writer in 1989, I had a career in advertising and public relations. After attending Arizona State University, I began as a copywriter for Jennings & Thompson Advertising in Phoenix, Arizona. I then moved to Los Angeles, California to accept a position as an account executive and Director of Broadcasting for Wenger-Michaels Advertising, then joined Shareholders, a mutual fund management company in Century City, California as Vice President, Marketing, and finally started my own advertising and public relations agency in the 1970s, where one of my clients was Tinder Box International, Ltd. ("TBI"), the largest retail tobacco chain in the United States at that time, with 148 stores, many of them franchised. It was through my ten-year relationship with TBI that I got an inside look at the tobacco industry and met many of the Cuban expatriates who fled their country when Fidel Castro nationalized the cigar industry.
- 3. Because of the knowledge that I had gained through my association with TBI, where I handled all of their publicity activities, including writing consumer-oriented booklets on pipes and cigars, conducting courses for their franchisee tobacconist training classes, and assisting with product development (pipe designs and cigar blends) that I ended up writing The Ultimate Pipe Book, which gave me the financial

freedom to dissolve my advertising and public relations agency and to turn to writing full time, where I eventually specialized in articles about whiskeys and cigars. One of my first major articles for the mass media was an article, appearing in the October 1989 issue of Playboy Magazine, entitled "Up In Smoke," in which I predicted a change in the cigar world (hinting at the cigar boom that was to come three years later). I continued writing about spirits and cigars for Playboy for a number of years, while also writing articles for many other consumer magazines as well (a list of the magazines I have written for is attached as Attachment B).

- 4. I am the author of a number of books (see Attachment C) including The Ultimate Cigar Book, widely acknowledged as the most authoritative book on the subject of cigars in the English language. Since its first publication in 1993, The Ultimate Cigar Book has gone through numerous printings and three editions all of which completely sold out (totaling approximately 45,000 copies). The book was then out of print for a number of years as I devoted more of my time to meeting the requests by editors for my magazine articles and to travel connected with these magazine assignments.
- 5. In 2015, due to ongoing demand from the public (primarily consumer cigar smokers), I updated The Ultimate Cigar Book as a new fourth edition (publisher: Skyhorse Publishing, New York), which sold out of its first printing in less than a year. In 2016 the fourth edition of this book went into a second printing, which again sold out within a year's time. In 2017 The Ultimate Cigar Book went into its third printing of the fourth edition in less than two years (for a total of 11,440 copies to date) and is currently listed on Amazon.com as one of their top five-star best sellers.

- I am also one of three Contributing Editors of Robb Report - America's leading luxury lifestyle magazine - where I specialize in writing about cigars and whiskies. I have regularly written for this publication on the subjects of cigars and cigar smoking since 1995. In addition, I personally select and write about every cigar included in Robb Report's annual Best of Best cigar category winners in each year's June issue. I also select and review (including my personal tasting notes) the world's newest premium non-Cuban cigars each fall for Robb Report's annual Host's Guide publication (Cuban cigars are not covered by Robb Report as they cannot legally be sold in the United States). I am also a regular contributor to the robbreport.com website, where I write about cigars and related topics, including cigar accessories. I also regularly contribute articles about cigars to other publications and have been frequently interviewed by reporters seeking information on the current cigar scene in America (see Attachment D).
- 7. During my cigar writing career I have visited all of the major cigar making countries, including Cuba, the Dominican Republic, Honduras, and Nicaragua. Not only have I been to the factories in these countries, but I have gone to many of the fields where the tobaccos are grown. In addition, as a longtime cigar smoker I have smoked and am very familiar with the cigars made in all of these countries, including Cuba.
- 8. Because of my vocation as a lifestyle writer and an acknowledged cigar expert, I interact with consumer cigar smokers on a regular basis, including at dinners, visiting tobacco shops, and other social encounters. In addition, I have often been hired as a keynote speaker on the subject of cigars and cigar smoking at consumer events, including seminars given at Ritz-Carlton Resorts; Laguna Niguel, CA; Ritz-Carlton Resorts, St. Louis, Missouri: the Los Angeles Athletic Club, Los

Angeles, CA; the Balboa Bay Club in Newport Beach, CA; and Blancpain Watches nationwide. At the end of these seminars I usually conduct a Q&A (Questions & Answers) session with the attendees, where they ask me questions about cigars – such as what is a maduro, how to properly relight a cigar that has gone out, and are Cuban cigars better than non-Cuban cigars. I cannot recall a single instance in the last decade in which a cigar smoker asked me a question or made a comment indicating that he or she was confusing the Cohiba cigar made by General Cigar with the Cohiba cigar made in Cuba.

- 9. I am also a regular attendee at the annual U.S. tobacco industry's International Premium Cigar & Pipe Retailers (IPCPR) Association trade show (the largest trade show of its kind in America), where I mingle with retail tobacconists and meet with many of their employees to discuss the current cigar situation on a retail as well as a consumer basis.
- 10. I have been retained by DLA Piper LLP, a law firm representing General Cigar Co., Inc., to act as an expert witness in this proceeding. I am being compensated for my services at the rate of \$450 per hour for time spent consulting with counsel, preparing this report and testifying. My travel expenses are also being covered.
- 11. I have been asked to provide the Board with my opinion with regard to United States consumer attitudes towards the General Cigar Cohiba cigar and the Cuban Cohiba cigar. In particular, I have been asked to give my opinion and conclusions as to whether, in 2017, potential and actual United States consumers of cigars are likely to be confused as to the source or origin of these cigars or to believe that there is a relationship or affiliation between the makers of these two different cigars.

- 12. In forming the conclusions set forth below, I have relied on my own observations and experiences accumulated over nearly 30 years as a cigar expert, which include: my frequent personal interactions and discussions with consumer cigar smokers and retail tobacconists at seminars and industry events; the extensive research I performed in connection with my book *The Ultimate Cigar Book*, and the additional extensive research I performed in writing the recently-published fourth edition of this book; my review of reliable industry and trade publications such as Smokeshop Magazine, Tobacco International Magazine, and Tobacconist Magazine and reliable Internet cigar commentary; my personal experience in reviewing hundreds of brands of cigars; and pertinent news stories that pertain to the tobacco industry.
- 13. In addition, I have familiarized myself with the situation concerning Cohiba cigars made by General Cigar and the Cohiba cigars made in Cuba by reviewing the following six documents, which were supplied to me by DLA Piper, and which I understand were created in prior litigation between General Cigar and Cubatabaco concerning the Cohiba mark in the United States:
- a. Defendant's Proposed Findings Of Fact and Conclusions of Law
- b. Report of Dr. Itamar Simonson, dated November 7, 2002
- c. Report of Alan Siegel
- d. Report Of Alvin Ossip On Significance Of Information In Market Research Related Files Furnished By General Cigar And

Third Parties With Respect To Certain Issues Concerning Cohiba

- e. A Study To Measure Awareness Of Cohiba Cigars And Source Confusion Between These Cigars And General Cigars Co. Inc. Cohiba Cigars
- f. Plaintiff's Post-Trial Proposed Findings Of Fact And Conclusions Of Law (Corrected Copy)
- 14. I found these six documents interesting in describing the American cigar scene as it existed from the early 1990s up until 2002. However, these reports have a very limited and a noticeably outdated value in describing the American cigar scene today. For consumers, the American cigar scene today is a dramatically different world that is light years away from what it was back in 1992 or even 2002. Specifically, I am referring to the rapid advancements in personal communications and the greatly accelerated and improved use of the internet by consumers for information-gathering about cigars as well as for cigar purchasing. As such, today's cigar smokers and potential cigar smokers are much more sophisticated and informed regarding their knowledge of the products that they use. This is the result of the technological advances that now enable consumers to obtain instant information and as a result, has increased the information that they may already have had.
- 15. For example, in the 1990s personal computers were in their infancy, being large and bulky and not as ubiquitous as they are today. And they were far from being as portable. Plus, the word "smartphone" was not part of our common vernacular back then as it is today, nor were portable telephone devices a part of a consumer's everyday attire, as

they are today. In fact, iPads did not even exist until 2010 and even back then, they had nowhere near the sophistication and portability and information-gathering capabilities that they have today.

- 16. Additionally, with consumers streaming to get their news and product research instantaneously, as they do today, print is no longer their sole and in many cases, even their primary means of information-gathering, as it once was. Thus, in terms of a consumer's access to instantaneous information, the world we live in today has technologically evolved into a lifestyle of instant information encompassing a global arena; it is a world that never existed back in 2002.
- 17. Since 2002 I have met with and spoken with many hundreds of cigar smokers at events such as those described above, and through these interactions I have learned that consumers are much better informed about cigars than they were in 2002. As a result, their questions are often more detailed, such as asking about the growing seasons of tobacco and knowing which part of a tobacco plant produces the heaviest flavors. All of this shows that consumers are much better informed on all matters of interest to them than they were fifteen years ago. And that includes cigars, both Cuban and non-Cuban.
- 18. The smoker of premium cigars that is, hand rolled cigars made of all natural tobaccos and with long leaf filer tobaccos, (as opposed to smokers of mass-produced "machine made" cigars that are dramatically less expensive) is a much more astute consumer today than in 2002. After all, if someone is paying anywhere from \$7 and up for a premium cigar (the General Cigar Cohiba cigar typically retails, depending on size and sub-brand, from approximately \$7.20 to \$23 each, not

including state and local taxes), it is far from being a random choice or a casual purchase. It is a definite monetary commitment to a product that is a symbol of a luxury lifestyle. As a result, that cigar smoker is keenly interested in discovering specific details concerning the cigars he is interested in buying, including their tobaccos, strength, and the countries in which they are made.

- 19. Thus, the premium cigar smoker is constantly updating his information about the current cigar scene. Like the consumer of fine wines, this fact checking and updating of information by premium cigar smokers is an on-going process. It is not unusual to see cigar smokers today constantly checking their iPhones to verify a cigar's price, availability, and country of origin. Their searches are made even easier thanks to the growing number of cigar apps, such as Cigar Boss, Cigar Scanner, and Mobile Stogie that can be downloaded to their iPhones, much as wine purchasers have apps for wine brands and varietals.
- 20. Premium cigar smokers constantly conduct their cigar searches in tobacco shops, or sitting with a group of fellow cigar smokers, or even by themselves at their computers, looking for specific information about brands. This identical phenomenon is also readily apparent when consumers are Googling other products as well, but with cigars, specifically the information that most often comes up in these searches is the wrapper-binder-filler tobaccos used in that specific cigar, the shape of the cigar, its price, and its country of origin, which is often accompanied by an image of the banded cigar itself, as seen on popular websites such as jrcigars.com, famous-smoke.com, and Thompsoncigars.com.

- 21. Because of all these aforementioned technological advances, today, there is a much greater knowledge among cigar smokers of the cigar world around them than there was in 2002. My book has certainly made consumers aware of the differences between Cuban and non-Cuban cigars, and this is a popular topic of conversation among cigar smokers on internet forums and elsewhere. After all, it cannot be denied that there is a definite cachet to Cuban cigars, in large part because they are the "forbidden fruit" to Americans due to the U.S. embargo on importing and selling Cuban cigars in the U.S. However, after more than fifty years, the Cuban embargo is "old news" to American citizens, and especially to American cigar smokers.
- 22. Recently, relaxed rules concerning travel by U.S. citizens to Cuba and the fact that U.S. citizens can now legally bring Cuban cigars into the United States as long as it is for their personal use has led consumers to ask whether the commercial situation has changed. I speak to many tobacconists, and some of them tell me that because of these changes, sometimes a customer will ask them if he can now buy Cuban cigars in the U.S. Of course, the tobacconists, who are another source of information for the consumer, always reply no, Cuban cigars cannot be sold in the United States.
- 23. As a result, the next thing a customer will often ask, is "Well, what do you have that is similar to a Cuban cigar in flavor or strength?" In short, consumers know that Cuban cigars are illegal to purchase in America and if for some reason they are unaware of this, their tobacconist will quickly point out the fact and will steer that customer to a non-Cuban cigar that he can legally sell.
- 24. Thus, in my experience, based upon my thousands of interactions with cigar smokers and tobacconists, I have

concluded that today, potential and actual smokers of premium cigars are aware that they cannot legally obtain Cuban cigars, including the Cuban Cohiba, in the United States. As a result, those smokers also know that the Cohiba cigars made by General Cigar and the Cohiba cigars made in Cuba are completely different and unconnected, because they can, in fact, purchase a Cohiba cigar made by General Cigar in the United States.

- 25. In addition, there are publications, including my own, that spotlight the fact that these two cigars are different. For example, in the fourth edition of The Ultimate Cigar Book (and in the previous three editions as well), in the chapter that lists all of the cigar brands in the world, I list the two different Cohiba cigars under two different headings and on different pages: on page 279: "Cohiba (Cuba) Yes, this is the cigar, the one that was originally reserved only for invited dignitaries to Cuba...." And on page 282: "Cohiba (Dominican Republic/Nicaragua) In 1993 this cigar was introduced to U.S. smokers via the Alfred Dunhill stores....etc."
- 26. There are many other examples as well. For example, on the website of the Thompson Cigar Company (the oldest mail order cigar company in the United States) under a blog by "Pat the Cigar Guy"

(https://www.thompsoncigar.com/blog/dominican-cohiba-vs-cuban-cohiba/) it reads, in part: "The Dominican Cohiba [a General Cigar product] has an incredible flavor that isn't overpowering. Between the draw, the look of the wrapper, the burn and more importantly, the construction is a thing of perfection. I've never come across a Cohiba that didn't smoke well so I decided to put the Dominican Cohiba to the ultimate test; compare it to a Cuban Cohiba. So, I'm in the Caribbean and

I buy a Cuban Cohiba and with me is my Dominican Cohiba and I start to compare..."

- 27. And from the Business Insider website (<a href="http://www.businessinsider.com">http://www.businessinsider.com</a>): "Cohiba is the Cuban brand of cigar, illegal in the United States (that we knew). There is another Cohiba you can get here legally, but it's made in the Dominican Republic those have red dots on them..."
- 28. I should point out that these internet mentions are made with the assumption that the reader already knows Cuban Cohibas and Cohibas made by General Cigar are completely different as to their country of origin. It is a well-known fact today.
- 29. Further contributing to the consumer's awareness of the differences between Cuban Cohibas and Cohibas made by General Cigar is the fact that the cigar bands on the General Cigar Cohiba cigars, and the boxes in which General Cigar Cohiba cigars are displayed and sold are distinctly different from the corresponding elements of Cuban Cohiba cigars. In addition the General Cigar Cohiba bands have a tagline on the band that plainly points out that it is made in either the Dominican Republic or Nicaragua, while the Cuban Cohiba band is very distinct, not only in its design, but with the words "Habana" or "La Habana" on the band.
- 30. It should also be pointed out that the majority of cigar magazines that cropped up during the cigar boom of the 1990s have gone out of business and even Cigar Aficionado the magazine that initially gave a boost to Habanos and the Cuban Cohiba no longer has the clout it once had. Part of the reason for this is that other lifestyle magazines, such as Robb Report, GQ, and Departures, now cover cigars as part of their overall

subject matter, so there are other places for consumers to get their cigar information besides Cigar Aficionado, not the least of which is the internet and numerous cigar forums. However, I should point out that the U.S. edition of Robb Report does not feature Cuban cigars, as they are illegal to purchase in the U.S. and our readers are aware of that. They may ask where they can buy Cuban cigars out of the U.S., but they know Cuban cigars cannot legally be purchased in the U.S.

- By the same token, consumers are now keenly aware that 31. there are duplicate Cuban and non-Cuban brands, such as Partagas, Montecristo, and most definitely Cohiba, which unlike these other two examples, does not even share a similar-looking band or box. Indeed, consumers now closely identify the General Cigar red-dot Dominican or Nicaraguan Cohiba as a totally different cigar than the Cuban version, with its distinctive yellow and black color combination and Taino Indian silhouette, although it should be mentioned that some cigar smokers do not know the silhouette is that of a Taino Indian. But they do know those artistic elements (the yellow, gold, and black design and the Taino silhouette) are found only on Cuban-made Cohibas, just as they know the red dot inside the "O" of the Dominican and Nicaraguan Cohiba indicates that the product is the General Cigar non-Cuban cigar. The bands of the Cuban and General Cigar Cohibas are graphically dramatically different (see Attachment E), as are the box designs (see Attachment F). The General Cigar band and box designs can be seen by U.S. consumers in many cigar reviews as well as in magazine and on-line advertisements.
- 32. Even for those unexposed to the differences between the Cuban Cohiba and the General Cigar Dominican or Nicaraguan Cohiba, all they have to do is to Google any of these cigars on their iPhones or computers and the answers appear, for a

cigar's country of origin is one of the key points of information that is brought up, along with graphics of the cigar's band itself, which is just as identifiable. In addition, cigar reviews, whether on-line or in print, invariably give a cigar's country of manufacture as part of that cigar's identity, a standard editorial procedure that can be seen in my cigar reviews. This is yet another feature of separating the well- known General Cigar Cohibas from the Cuban Cohibas. As a result, the General Cigar Dominican and Nicaraguan Cohibas are extremely well-known by American consumers, who recognize them as non-Cuban products.

33. Therefore, it is my conclusion, based upon the experience and data described above, that today, given the far greater knowledge of both Cuban and non-Cuban cigar brands by the United States cigar smoker than existed in 2000, and with the ready access to information that can be obtained by the consumer instantly with merely the tap of a key, there is no appreciable confusion among today's potential and actual premium cigar smokers between the Cuban Cohiba from Habanos and the Dominican or Nicaraguan Cohiba from General Cigar. Those smokers know that the cigars come not only from different countries, but also from different and unrelated manufacturers. A United States cigar smoker who spends between \$7 and \$23 for a General Cigar Cohiba in the United States knows that he is buying a premium cigar, but not one that is connected with the Cuban Cohiba sold in other countries.

Dated: May 31, 2017

RICHARD CARLETON HACKER

## **Attachment A**

Richard Carleton Hacker is one of the world's foremost authorities on the subjects of cigars and cigar smoking. He is the author of twelve books, including The Ultimate Cigar Book, now in the second printing of its fourth edition and the book that is generally credited with having helped start the cigar boom back in the early 1990s, when it was first published. In addition, he is a Senior Contributing Editor for The Robb Report, America's leading luxury lifestyle magazine, and is a contributing writer on cigars for other national and international publications. Mr. Hacker has written hundreds of articles on the topic for additional publications in the United States and Europe. He has been knighted in Germany by the Internationales Tabakskoliegium for his extensive and dedicated writings about tobacco.

He is personally acquainted with all of the major cigar-making companies throughout the world, as well as many of the smaller manufacturers and cigar-making families. Mr. Hacker has personally visited and studied cigar factories and tobacco farms in every major geographic area, including Cuba, the Dominican Republic, Honduras, Nicaragua, and Europe. He currently maintains cigars in a number of humidors and keeps detailed tasting notes on hundreds of cigar brands from all of the major tobacco-producing regions of the world. Mr. Hacker also collects cigar memorabilia, including cigar boxes, labels and cutters.

In 1975, Mr. Hacker became the marketing and public relations consultant for Tinder Box International, Ltd. Since, he has served as a cigar consultant for both corporations and individuals. He is also has been a popular keynote speaker at cigar night "smokers." In addition, Mr. Hacker has been the subject of numerous radio, television, newspaper, and

magazine interviews. He is recognized as an international spokesman of the cigar industry.<sup>1</sup>

## RELEVANT PROFESSIONAL EXPERIENCE

1975 Marketing and Public Relations Director of Tinder Box International, Ltd.

1995 Senior Contributor of the Robb Report.

<sup>&</sup>lt;sup>1</sup> As one of the world's foremost writers on the pleasures of tobacco, Richard Carleton Hacker has long been known as the "cigar czar." – Los Angeles Times: "Cigar Czar" Knighted by German Town <a href="http://articles.latimes.com/1995-02-10/local/me-30570">http://articles.latimes.com/1995-02-10/local/me-30570</a> 1 cigar-czar

# **Attachment B**

## Author of cigar-related articles printed in consumer publications including:

- Playboy Magazine
- Smoke Magazine
- Smokeshop Magazine
- The Tasting Panel
- Robb Report Magazine
- Robb Report Host's Guide
- Caviar Affair Magazine
- Collection Magazine
- European Cigar Cult Journal
- Safari Magazine
- Quarterly Review of Wines 2007
- Drinks Magazine
- Indulge Magazine

# Author of cigar-related articles printed in online consumer publications including:

- robbreport.com
- RobbVices
- cigarworld.com

# **Attachment C**

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## **BOOKS AUTHORED:**

- The Muzzleloading Hunter, Winchester Press, 1981;
- The Ultimate Pipe Book, Autumngold Publishing, 1984 (First U.S. Edition);
- The Christmas Pipe, Autumngold Publishing, 1986;
- The Ultimate Pipe Book, Souvenir Press, 1988 (First British Edition);
- The Muzzleloading Hunter, Outdoor Life Press, 1988;
- The Ultimate Pipe Book, Autumngold Publishing, 1989 (Second U.S. Edition);
- Die Kunst Pfeife zu rauchen, Wilhelm Heyne Verlag, 1991 (First German Edition);
- The Ultimate Cigar Book, Autumngold Publishing, 1993 (First U.S. Edition);
- Die Welt der Zigarre, Wilhelm Heyne Verlag, 1995 (First German Edition);
- The Ultimate Pipe Book, Andre Deutsch, 1995 (Second British Edition);
- The Ultimate Cigar Book, Autumngold Publishing, 1996 (Second U.S. Edition);
- Rare Smoke The Ultimate Guide To Pipe Collecting, Autumngold Publishing, 1999;
- The Ultimate Cigar Book, Autumngold Publishing, 2000 (Third U.S. Edition);
- Das Handbuch des Pfeifenrauchers, Wilhelm Heyne Verlag, 2000 (First German Edition);
- Pipesmoking A 21st Century Guide, Autumngold Publishing, 2000;

- Die Welt der Zigarre, Collection Rolf Heyne, 2001 (Second German Edition);
- The Ultimate Cigar Book, Skyhorse Publishing, 2015, Fourth U.S. Edition

## **VIDEOS:**

- The Ultimate Pipe Video (Premiere Edition), 1987;
- The Ultimate Pipe Video (Collector's Edition), 1987

## **AUDIO TAPES:**

CigarQuest-Conversations In Smoke, 1997

## **SPEECHES:**

- Ritz-Carlton Resorts (Laguna Niguel, CA; St. Louis, Missouri)
- Blancpain Watches
- Alfred Dunhill, Ltd.
- Balboa Bay Club, Newport Beach, CA
- Los Angeles Athletic Club, Los Angeles, CA

## **Attachment D**

## MENTIONS OR FEATURES IN PUBLICATIONS:

- Luxe Beat Exclusive: Interview with "Cigar Czar" Richard Carleton Hacker luxebeatmag.com/luxe-beat-exclusive-interview-cigar-czar-richard-carleton-hacker/
- Author of top-rated cigar book on Amazon.com https://www.amazon.com/Ultimate-Cigar-Book-4th/dp/1632206579
- Los Angeles Times: "Cigar Czar" Knighted by German Town http://articles.latimes.com/1995-02-10/local/me-30570\_1\_cigar-czar
- Los Angeles Times article, quoted in The Vice That Binds http://articles.latimes.com/1994-08-12/news/va-26509\_1\_premium-cigar
- Profiled in Los Angeles Times Article:
   Smoke Gets In His Buys"
   http://articles.latimes.com/1994-08-12/news/va-26509\_1\_premium-cigar

## **Attachment E**

## Cohiba Red Dot Band



Cohiba Linea Clasica Band



# **Attachment F**

## Cohiba Red Dot Box



Cohiba Linea Clasica Box



## Annex 2

# SUPPLEMENTAL EXPERT REPORT BY RICHARD CARLETON HACKER CONCERNING RELEVANT EVENTS SINCE MY EXPERT REPORT OF MAY 31, 2017

- 1. My name is Richard Carleton Hacker. I previously made an Expert Report in this Cancellation Proceeding, dated May 31, 2017, which was provided by counsel for Respondent General Cigar Company, Inc. ("General Cigar") to counsel for Petitioner Empresa Cubana del Tabaco, d.b.a. Cubatabaco ("Cubatabaco").
- 2. This Supplemental Expert Report is provided under Fed. Rs. Civ. P. 26(a)(2)(B) and (E), and 26(e), which permits supplementation of expert disclosures "if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing."
- 3. My original Expert Report spoke as of the date of the Report, May 31, 2017. I continue to maintain the opinions expressed in the Expert Report.

  However, since the date of my Expert Report, which is over two and one-half years ago, there have been additional facts occurring which support my opinions but which I obviously was not able to cite in my original Expert Report. I understand that the Board assesses claims of likelihood of confusion as of the time of trial.

Accordingly, my Expert Report is incomplete because it does not provide these facts for the Board's consideration. The additional facts, set forth below, should be considered by the Board in connection with the opinions I expressed in my original Expert Report.

- 4. First, I should note that since May 31, 2017, I have continued to act as an expert in matters of cigars. I continue to act as a Contributing Editor of Robb Report and have contributed numerous articles on cigars which have been published both in print and online in the past two and one-half years. I continue to personally select and write about every cigar included in Robb Report's annual Best of Best Cigar category winners and runners-up. I continue to select and review new premium non-Cuban cigars each fall and winter as suggested gifts for Robb Report readers. I also continue to contribute articles about cigars to other publications and to be interviewed by reporters on the subject of cigars, such as in my recent interview in Luxe Beat Magazine (Exhibit A). My book, The Ultimate Cigar Book (4th edition), continues to sell well, and on December 9, 2019, I was informed by my publisher, Skyhorse Publishing, that an additional 6,000 copies have been printed to meet reader demand.
- 5. Since the date of my original report, I have continued to meet with many premium cigar smokers and have engaged in many discussions with those smokers concerning both Cuban and non-Cuban cigars. No one I have met with

during this time has expressed any confusion to me between the General Cigar non-Cuban Cohiba cigar and the Cuban Cohiba cigar.

- 6. During the past two and one-half years, I have found through my personal experience that premium cigar consumers continue to be increasingly better informed about cigars.
- 7. In addition to the continued and increasingly widespread use of the Internet and smartphones by cigar smokers to regularly obtain new and/or updated information concerning cigars (i.e. new brands, ratings, etc.), an additional source of information for U.S. cigar consumers has gained in popularity recently podcasts. These are basically chat shows (both audio and visual) that involve one or more "hosts" sitting around a microphone and sometimes with a video camera focused on them and talking about cigars. They can be accessed by listeners/viewers via an Internet connection. Among the better-known cigar podcasts are The Retrohale, The Cigar Authority, Cigar Hacks, Stogie Geeks, Cigar Talk, Cigar Snob, and Cigar Nerds.
- 8. The "hosts" are not professionals in the strictest sense of the word, but are primarily consumers who are keen to discuss cigars, either among themselves on a podcast, or occasionally with call-in listeners who have questions or opinions. Cigar-related podcasts and their audiences have grown significantly over the past few years.

- 9. Because I am well-known in the cigar world, I have often been invited as a guest on some of these podcasts, where I am interviewed about various brands of cigars, cigar smoking, pairing cigars with alcoholic beverages, and related topics that often include Cuba, the Dominican Republic, Honduras, and Nicaragua the world's top four cigar producing countries.
  - 10. The most recent U.S. cigar podcasts on which I have appeared are:
    - The Retrohale (October 18, 2019), available at <a href="https://theretrohale.libsyn.com/the-retrohale-232-author-richard-charleton-hacker-and-the">https://theretrohale.libsyn.com/the-retrohale-232-author-richard-charleton-hacker-and-the</a>
    - The Cigar Authority (October 12, 2019), available at
       <a href="https://podcasts.apple.com/kw/podcast/the-ultimate-cigar-book-meets-the-ultimate-cigar-podcast/id413869893?i=1000453262801">https://podcasts.apple.com/kw/podcast/the-ultimate-cigar-book-meets-the-ultimate-cigar-podcast/id413869893?i=1000453262801</a>
    - Cigar Hacks (August 5, 2019), available at
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    - Stogie Geeks (July 30, 2019), available at
       <a href="https://stogiegeeks.com/2019/07/30/richard-carleton-hacker-author-stogie-geeks-302.html">https://stogiegeeks.com/2019/07/30/richard-carleton-hacker-author-stogie-geeks-302.html</a>

- 11. Although the subject of Cuban versus non-Cuban cigars often comes up when I am interviewed on U.S. podcasts – because Cuba remains a topic of interest to cigar smokers due to the embargo and the fact that Cuban cigars are not commercially available in the United States – not once, in any of my U.S. podcast interviews, has there ever been any confusion expressed by the part of the hosts or the call-in listeners between the Cuban Cohiba and the Dominican and Nicaraguan Cohiba made by General Cigar. Because the U.S. podcast hosts and their listeners are cigar smokers, they already know that Cuban and non-Cuban cigars are completely different, that they are made in different countries, that Cuban cigars cannot be sold in the U.S., that Cuban and non-Cuban cigars smoke (i.e. taste) differently, and that there is no relationship between Cuban and non-Cuban cigars. They also know that some Cuban and non-Cuban cigars share a brand name, such as Hoyo de Monterrey, H. Upmann, or Cohiba. But, in my experience, no cigar smoker either hosting a U.S. podcast or dialing into a U.S. podcast has said anything suggesting that they are confusing the Cuban and non-Cuban cigars that use the same brand names.
- 12. These cigar-related podcasts have only solidified the already-existing knowledge among American cigar smokers that the Cuban Cohiba and the non-Cuban Cohiba cigars are completely different from one another.

- 13. Another factual development since the date of my original report is President Trump's recent tightening of travel restrictions of American citizens vising Cuba. This has cut down the number of American cigar smokers visiting Cuba. However, these travelers know they can still buy Cuban cigars including the Cuban Cohiba in Cuba and other countries (with the exception of the U.S.) and still legally bring them into the U.S. as long as it is for their personal consumption and not for resale. American cigar smokers are also fully aware that the only Cohiba they can purchase in the U.S. is the General Cigar Cohiba, as it is not a Cuban product.
- 14. Since the date of my original report, cigar publications have also continued to confirm that premium cigar consumers are well-educated and sophisticated about the cigars they purchase and smoke. For example, in a July 11, 2019 Cigar Aficionado article, "2019 Retailer Survey: The Best-selling Cigar Brands in America, Market Trends and More." (Exhibit B), Cigar Aficionado stated that "[t]oday's cigar consumers have discerning tastes and are willing to spend more money on quality cigars another good sign for tobacconists everywhere." It quoted Michael Herklots, vice-president of Nat Sherman International, which owns the well-known Nat Sherman Townhouse cigar store in Manhattan, as saying "Customers are more educated than ever . . . . They make decisions with tremendous discretion."

original report stated, is already known to almost all premium cigars consumers, namely that the Cohiba cigar sold in the United States by General Cigar using non-Cuban tobacco is not related to the Cuban Cohiba cigar. For example, JR Cigars, a major internet cigar retailer, published an article, "The Difference between a Cuban Cohiba Cigar and Dominican Cohiba Cigar" on its website, dated July 11, 2018. (Exhibit C). In the article, JR Cigars notes the following:

With the Cuban Cohiba being completely under Cuban control with no immediate copyright or trademark problems, in 1978, the name was taken by General Cigar and registered for distribution in the United States. Calling them the Red Dot Cohibas and using exclusively Dominican tobacco, The Dominican Cohiba brand became immensely popular during the boom of the 1990s and remains a top of the line Dominican cigar even to this day.

The only real difference between the Cuban and Dominican Cohiba cigar is just where the tobacco is rolled. They are both high quality, premium cigars. If you live in the US, there are no Cuban Cigars near you, however, you can go to JR Cigars right now to enjoy the Dominican version of the legendary Cohiba Cigar. While you are there, check out the Nicaraguan Cohiba cigars too!

16. JR Cigars has also published an article on its website on the similarly-situated Partagas cigar, entitled, "The Difference between a Cuban Partagas Cigar and Dominican Partagas Cigar" dated March 4, 2019. (Exhibit D). The article notes that the Partagas name "is used today by two independent and competing entities, one produced [in Cuba], and the other, containing no Cuban tobacco,

produced in the Dominican Republic for the prestigious General Cigar Company."

The article goes on to state that "Dominican Partagas are among the best-selling premium cigars in the United States today . . . allowing you to find the perfect smoke that rivals the amazing taste of the Cuban Partagas Cigar."

17. It should be noted that JR Cigars is a subsidiary of Altadis S.A., which is also a 50% owner of Habanos S.A., the distributor of the Cuban Cohiba cigar.

Dated: December 29, 2019

RICHARD CARLETON HACKER

## **EXHIBIT A**

TRENDING: Heard Museum, An Icon of Phoenix and Native American Culture... (https://luxebeatmag.com/heard-museum-icon-phoenix-native-american-culture/)

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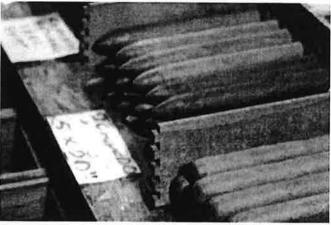
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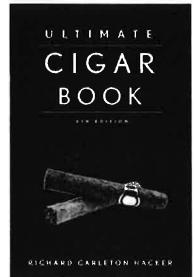
(https://i2.wp.com/luxebeatmag.com/wpcontent/uploads/2015/07/untitled-14-2.jpg) Richard Carleton Hacker

If there is one person who knows a lot about cigars and cigarettes, it's Richard Carleton Hacker. Known as one of the world's foremost authorities on the subjects of cigars and cigar smoking, he was given the nickname "the cigar czar" by several media outlets. He has written more than five hundred articles on the topic for publications such as *The Robb Report, RobbVices, Collection Magazine, The Tasting Panel, Somm Journal* and *cigarworld.com.* In 1994, he was knighted by the Internationales Tabakskoliegium in Germany for his numerous writings on the subject of tobacco.



(https://l0.wp.com/luxebeatmag.com/wp-content/uploads/2015/08/cigar-1441566.jpg)

His book, *The Ultimate Cigar Book 4<sup>th</sup> Edition*, was first published in 1993, recently republished and sold worldwide. The book is touted as the most comprehensive, factual and up-to-date book for the cigar smoker, but it's also perfect for those who just want to learn more about the fascinating and popular world of cigar smoking. We sat down with Richard and chatted about the life of a cigar aficionado.



## Kimberly Fisher: How did you get into cigars? When was the first time?

RIchard Carleton Hacker: I started smoking cigars during my senior year in college. I had smoked a pipe (I have never smoked cigarettes), but found cigars a whole new experience. They felt comfortable in the hand and they looked good. Plus, like pipe tobacco, they were made of pure tobacco and nothing else — no additives. And they were easy to clip and light. I started off with inexpensive stogies, but once I lit up a hand-rolled premium cigar, I never looked back. That's when I formed my philosophy that I would rather smoke one good cigar a month than seven mediocre cigars a week.

### KF: For someone just starting off in cigars, what do you recommend?

RCH: Start with a mild cigar, like a Macanudo or a Davidoff Anniversario. Experiment with different brands and different sizes. Don't buy a whole box. Instead, buy single cigars of individual brands and experiment. It's like going to a wine bar and sampling different varietals. Ask a tobacconist for his recommendations as well. As for sizes, one of the most popular is the robusto, which provides plenty of flavor and will last about 30 to 45 minutes. And remember, with cigars, you don't inhale – you get all the flavor from the smoke, which you then exhale.



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### KF: You have traveled the world exploring the making and history of cigars. Where have you been and what are some of your favorite places?

RCH: I've been to every major clgar-making country, including Cuba, the Dominican Republic, Nicaragua, Honduras, Costa Rica and the U.S, of course - although we don't make nearly a fraction of the cigars we did during the late 19th and early 20th centuries because of labor costs.

I find it interesting that today the most elegant premium cigars are made in third word countries, where labor is cheap. Of all the places I've visited, among my favorites is Cuba, because of its great cigar-making tradition and — politics aside — its people (who are as curious about us as we are about them), and the Dominican Republic, as they supply most of the world's non-Cuban cigars. Plus, I am a big fan of Dominican food and rum.

### KF: What do you think spawned the cigar craze in America?

RCH: It was caused by Individuals who literally had money to burn — that is, they had no qualms about lighting up a ten-dollar cigar — and were looking for a new lifestyle experience that was complementary to other aspects in their lives, such as fine dining (cigars are a great digestif after a meal) as well as whiskles and cognacs, which pair well with cigars. In addition, cigar smoking is a very social endeavor. They invite conversation, especially with fellow cigar smokers. It's a very social thing that breaks down all sociological, ethnic and even political barriers. Plus, cigars have always retained an aura of success. And, they are relaxing to smoke, an important aspect in today's hectic world.

### KF: What is your favorite cigar?

RCH: Whichever one I happen to be smoking.

### KF: In your book you list several types of clgar pairings. What is your typical pairing?

RCH: It depends on my mood, but invariably it involves a stronger spirit rather than a lighter one. A single malt whiskey, such as a Macallan 18 Year Old and a Padron Family Reserve or a Fuente OpusX is nothing short of perfection. I also like pairing certain complex bourbons, like Blanton's, with Honduran cigars, and LBV ports with medium-strength cigars like the Dominican Cohiba or the Cuban H. Upmann.

To learn more about cigars or Richard, please see: richardcarletonhacker.com (http://richardcarletonhacker.com/)

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Kimberly Fisher is a Freelance Writer and On Camera Host based in New York City. Kimberly's work has appeared in over 38 publications including Huffington Post, JustLuxe, Luxe Beat Magazine, Ocean View Magazine, Pursuitist, Sherman's Travel, Sunset Magazine, Travels.com and USAToday. Her travels has taken her to sipping champagne cliffside in Portofino, shark feeding in Tahiti, yacht racing in Nevis, swimming in the Blue Lagoon, following the silk road in China and camel riding in the Gobi Desert. She is a member of the International Food, Wine & Travel Writers Association, Professional Travel Bloggers Association, North American Travel Journalists Association and International Travel Writers Alliance, You can always find her at uses Kimbarly Fichar com

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### Cigar Industry (/cigar-industry)

## 2019 Retailer Survey: The Best-selling Cigar Brands In America, Market Trends And More

Jul 11, 2019 | By David Clough (/author/david-clough)

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Arturo Fuente, Padrón, Ashton, Davidoff and Rocky Patel (left to right) are among the best-selling cigar brands in America.

igar shop owners from across the United States have spoken: cigar sales are up, Arturo support of the Charles o

Our results are gleaned from 173 brick-and-mortar cigar shops from small towns and major cities all over the United States—from New York to California, Texas to North Dakota and everywhere in between. Nearly 69 percent of the retailers who took our poll said they were selling more cigars this

year compared to last year. People are buying more cigars, and in response, a wave of premium smokes are pouring into the U.S. (https://www.cigaraficionado.com/articles/cigar-shipments-best-in-20-years-despite-november-drop) from Nicaragua, the Dominican Republic and Honduras. According to data from the Cigar Association of America, 362 million handmade cigars (https://www.cigaraficionado.com/articles/best-year-for-handmade-cigar-imports-since-1997) were imported into the United States tast year, the most since 1997. This information speaks to the general health of the industry, and shows that demand for premium cigars remain strong.

Our survey also revealed which cigar brands are moving best. In terms of volume, almost 47 percent of retailers named Arturo Fuente as one of their best-selling brands. This makes Fuente *Cigar Insider's* best-selling brand of 2019, overtaking Padrón

(https://www.cigaraficionado.com/company/padron-cigars-inc), which held the title of best-selling brand last year.

1 Arturo Fuente	46.89	
2 Padrón	40.39 24.79	
3 Ashton		
4 Davidoff	23.49 22.19 16.99	
5 Rocky Patel		
6 Perdomo		
7 Oliva	13.0%	
8 My Father	10.4%	
8 Romeo y Julieta	10.4%	
10 Montecristo	6.5%	

(https://img.mshanken.com/d/cao/bolt/2019-07/bestselling2019.jpg)

Source: CIGAR INSIDER

Arturo Fuente is a family-run (https://www.cigaraficionado.com/articles/one-hundred-years-of-fuente-16342) operation headed by Carlos "Carlito" Fuente Jr.

(https://www.cigaraficionado.com/articles/carlos-fuente-jr-and-the-cigar-factory), along with his sister Cynthia Fuente and his daughter Liana (https://www.cigaraficionado.com/video/hM2bc2dJ/from-the-lounge-being-a-woman-in-the-cigar-industry). The company is perhaps best known for its Fuente Fuente OpusX (https://www.cigaraficionado.com/ratings/search?

brand=Fuente+Fuente+OpusX&main-search=main+search&submitted=Y) cigar line, heralded by cigar live stories flowerful, sweet-and-spicy smoking characteristics and bemoaned for its rarity: Nearly 25 years after its initial release, the Dominican cigar still commands high prices at retail and tends to sell out quickly. The company's OpusX Double Corona took home Cigar Aficionado's No. 1 Cigar of the Year (https://www.cigaraficionado.com/top25cigar/fuente-fuente-opusx-double-corona-2005) award in 2005.

Padrón, which ranked second in terms of sales, has earned a spot on Cigar Aficionado's Top 25 list every year (https://www.cigaraficionado.com/top25/2018) since its inception. The Padrón portfolio consists of high-end, Nicaraguan cigars such as Padrón 1964 Anniversary Series (https://www.cigaraficionado.com/ratings/search?

organization.

brand=Padr%C3%B3n+1964+Anniversary+Series&main-search=main+search&submitted=Y),
Padrón Family Reserve (https://www.cigaraficionado.com/ratings/search?
brand=Padr%C3%B3n+Family+Reserve&main-search=main+search&submitted=Y) and Padrón
Serie 1926 (https://www.cigaraficionado.com/ratings/search?
brand=Padr%C3%B3n+Serie+1926&main-search=main+search&submitted=Y), as well as a more
wallet-friendly core line (https://www.cigaraficionado.com/ratings/search?
submitted=Y&brand=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&brands%5B%5D=Padr%C3%B3n&taste\_date=&iss
search=Search) that consumers commonly refer to as the company's "brown label." The company
was started in 1964 by José Orlando Padrón, who passed in 2017
(https://www.cigaraficionado.com/articles/death-of-a-master-jose-orlando-padron). His son Jorge

U.S. retailers once again named Ashton (https://www.cigaraficionado.com/brand/ashton) as the No. 3
best-selling cigar brand, the same position it held last year. All of Ashton Distributors'
(https://www.cigaraficionado.com/company/ashton-distributors-inc) Ashton-branded products are
made at the Fuente factory in the Dominican Republic. Headquartered in Philadelphia, Ashton Is run
by Robert Levin (https://www.cigaraficionado.com/articles/an-interview-with-ashtons-robert-levin6123), his son Sathya and daughter Meera. The company is known for its traditional cigar lines such
as Ashton Classic (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=&submitsearch=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&brands%5B%5D=Ashton&taste\_date=&issue\_date=&issue\_year
and Ashton Virgin Sun Grown (https://www.cigaraficionado.com/ratings/search?
brand=Ashton+Virgin+Sun+Grown&submitted=Y). The latter came to market in 1999. Ashton's
relevance and high sales numbers today are indicative of the brand's quality and consistency.

More than 23 percent of cigar retallers said Davidoff

(https://www.cigaraficionado.com/brand/davldoff)was a best-selling brand. It took the fourth spot in our best-selling brands survey—a ranking it also secured last year. Davidoff positions itself as a luxury cigar company, and its portfolio of high-end products includes lines such as Davidoff Millennium (https://www.cigaraficionado.com/ratings/search? submitted=Y&brand=Davidoff+Millennium&submit-search=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&taste\_date=&issue\_date=&issue\_year=), Grand Cru (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brands%5B%5D=Davidoff+Grand+Cru), Signature (https://www.cigaraficlonado.com/ratings/search?submitted=Y&brands%5B%5D=Davidoff+Signature)

(https://www.cigaraficionado.com/video/search?q=Jorge+Padr%C3%B3n) now leads the

and Aniversario (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brand=DavIdoff+Aniversario&submit-

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cigars that fall under the company's "white label" series, so called because of the bands that adorn each cigar. Starting in 2013, the company expanded its offerings with a range of "black label" cigars,

which has grown to include Davidoff Nicaragua (https://www.cigaraficionado.com/ratings/search?

brand=Davidoff+Nicaragua&submitted=Y), Davidoff Yamasá

(https://www.cigaraficionado.com/ratings/search?

submitted=Y&brands%5B%5D=Davidoff+Yamas%C3%A1) and Davidoff Escurlo

(https://www.cigaraficionado.com/ratings/search?submitted=Y&brands%5B%5D=Davidoff+Escurio).

The Swiss-company rolls all its Davidoff-branded products in the Dominican Republic.

Rocky Patel (https://www.cigaraficionado.com/company/rocky-patel-premium-cigars) ranked fifth, named by more than 22 percent of shop owners, up from 11.6 percent last year. The company's upward trajectory can be attributed to its wide range of quality products and the tireless promotional efforts of brand owner Rocky Patel (https://www.cigaraficionado.com/articles/controlling-interest-17598), his brother Nish and cousin Nimish. The Rocky Patel 15th Anniversary Toro (Tubo) (https://www.cigaraficionado.com/top25cigar/rocky-patel-15th-anniversary-toro-tubo-2018) was on Cigar Aficionado's Top 25 list last year. The company makes its cigars in both Honduras and Nicaragua.

Perdomo (https://www.cigaraficlonado.com/ratings/search?brand=Perdomo&main-search=main+search&submitted=Y) cigars, which are made by brand owner Nick Perdomo (https://www.cigaraficionado.com/article/the-world-according-to-perdomo-6131) in Estell, Nicaragua, moved up from the No. 8 spot in 2018 to No. 6 this year. Oliva Cigars (https://www.cigaraficionado.com/company/oliva-cigar-co), which held the No. 7 spot last year, has retained its position as the seventh best-selling brand. Oliva is rapidly expanding as the company recently opened up a second cigar factory (https://www.cigaraficionado.com/article/oliva-cigar-co-In-

major-expansion-mode) in Estelí, Nicaragua, called Tabolisa II, to focus on production of lighter-hued cigars, such as Oliva Connecticut Reserve. The company is owned by Belgium cigarmaker J. Cortès Cigars N.V., which acquired Oliva In 2016 (https://www.cigaraficionado.com/article/oliva-cigaracquired-by-european-cigar-company-18889).

My Father Cigars (https://www.cigaraficionado.com/company/my-father-cigars-inc) ranked No. 8, a drop from the No. 5 spot in 2018, and the non-Cuban versions of Romeo y Julieta (https://www.cigaraficionado.com/ratings/search?submitted=Y&brand=Romeo&submit-

search=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&countries%5B%5D=Non+Cuban&taste\_date=&issue\_date=&issue\_and Montecristo (https://www.clgaraficionado.com/ratings/search?

submitted=Y&brand=Montecristo&submit-

search=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&countries%5B%5D=Non+Cuban&taste\_date=&issue\_date=&issue\_grabbed the final two best-seller positions: Romeo y Julieta tied with My Father at No. 8 and Montecristo closed out the best-seller list at No. 10. Both brands are owned by Altadis U.S.A. (https://www.cigaraficionado.com/company/altadis-u-s-a-inc) and come in a variety of different tobacco blends.

1 Padrón	46.8%	
2 Arturo Fuente	29.9% 18.2%	
3 Fuente Fuente OpusX		
4 Liga Privada	14.3%	
5 Rocky Patel	13.0%	
6 Oliva		
7 Davidoff	10.4%	
7 La Flor Dominicana	10.4%	
9 Encore by E.P. Carrillo	9.1%	
10 My Father	7.8%	

(https://img.mshanken.com/d/cao/bolt/2019-

Source: CIGAR INSIDER 07/hottestbrands2019.jpg)

Our survey also covered the hottest brands of 2019—a separate list from the best sellers, where retailers are asked to identify the cigars that customers most often request (but can't necessarily obtain). In this category, Padrón and Arturo Fuente swapped places: Padrón is the No. 1 requested cigar in the United States, followed by Arturo Fuente and its ultra-premium sub-brand, the elusive Fuente Fuente OpusX.

Liga Privada (https://www.cigaraficionado.com/brand/liga-privada) from Drew Estate (https://www.cigaraficionado.com/company/drew-estate) ranked No. 4, with 14.3 percent of retailers saying the brand is one of the hottest on the market. Drew Estate launched Liga Privada (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brands%5B%5D=Liga+Privada+No.+9) in 2007 and the cigar quickly became a smash

hit for the company. Based on its success, Drew Estate added subsequent lines such as Liga Privada T52 (https://www.cigaraficionado.com/ratings/search? submitted=Y&brands%5B%5D=Liga+Privada+T52) and Liga Privada Único Serie (https://www.cigaraficionado.com/ratings/search? submitted=Y&brands%5B%5D=Liga+Privada+%C3%9Anico+Serie), a collection of limited-production Liga cigars rolled in special sizes and blends.

Rocky Patel remains in demand as the fifth most-requested cigar brand, followed by Oliva at No. 6, with Davidoff and La Flor Dominicana (https://www.cigaraficionado.com/company/la-flor-dominicana-cigars) both tied for 7th place.

La Flor Dominicana (https://www.cigaraficionado.com/brand/la-flor-dominicana), made in the Dominican Republic by brand owner Litto Gomez (https://www.cigaraficionado.com/articles/littostwist-of-fate-6217), commanded the No. 3 hottest brand spot last year. At the time, the brand was buoyed by Andalusian Bull

(https://www.clgaraficionado.com/ratings/detail/source/sitesearch/note\_id/19447) taking *Cigar Aficionado's* Cigar of the Year award in 2016—but the current reigning Cigar of the Year winner, the E.P. Carrillo Encore Majestic (https://www.cigaraficionado.com/top25clgar/e-p-carrillo-encore-majestic-2018) may have taken some wind from its sails.

Encore (https://www.cigaraficionado.com/articles/epc-previews-new-encore-cigar-in-santiago) appears for the first time ever on our hottest brands list this year as the 9th most requested cigar. It's rolled from a blend of all Nicaraguan tobacco and made in the Dominican Republic at brand owner Ernesto Perez-Carrillo's factory (https://www.cigaraficionado.com/articles/the-journey-of-an-encore-cigar). The No. 10 spot on this year's hottest brands poll belongs to My Father Cigars, which also may have seen a halo effect from its strong Top 25 showing. The company had the No. 2 cigar on our Top 25 last year, the My Father La Opulencia Toro (https://www.cigaraficionado.com/top25cigar/my-father-la-opulencia-toro-2018), and has won Cigar of the Year two times.

When it comes to clgar sizes, our poll clearly shows that America still has an appetite for thicker ring gauge cigars (https://www.cigaraficionado.com/articles/supersize-my-cigar-19177). In line with last year's results, robustos (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brand=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&cigar\_size%5B%5D=Robusto&taste\_date=&issue\_search=Search) continue to be the best-selling size at retail. Toros

(https://www.cigaraficionado.com/ratings/search?

submitted=Y&brand=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&cigar\_size%5B%5D=Corona+Gorda&taste\_date=&search) (which are also called corona gordas), came in second with grandes

(https://www.cigaraficionado.com/ratlngs/search?submitted=Y&brand=&submit-

search=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&cigar\_size%5B%5D=Grande&taste\_date=&issue\_date=&issue\_very fat cigars with 60 ring gauge or higher) landing at third. The long and stately Churchill (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brand=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&cigar\_size%5B%5D=ChurchIll&taste\_date=&issue\_search=Search) came in at No. 4, with figurados (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brand=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&clgar\_size%5B%5D=Figurado&taste\_date=&issue\_search=Search) and coronas (https://www.cigaraficionado.com/ratings/search?

submitted=Y&brand=&text\_search\_flag=everything&fuzzy=no&submitted=Y&page=1&sort\_dir=default&cigar\_size%5B%5D=Corona&taste\_date=&issue\_d search=Search) tied at No. 5.

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BEST-SELLING SIZES	
1 Robusto	37.5%
2 Toro/Corona Gorda	26.3%
3 Grande (6x60)	21.5%
4 Churchill	7.5%
5 Figurado	2.5%
5 Corona	2.5%

(https://img.mshanken.com/d/cao/bolt/2019-07/bestsizes2019.jpg)

Source: CIGAR INSIDER

Cigar retailers also gave their thoughts on the annual IPCPR trade show, which is being renamed the PCA (https://www.cigaraficionado.com/article/ipcpr-being-renamed-premium-cigar-association). More than 70 percent of the people who answered our survey told *Cigar Insider* that a cigar shop owner, or one of their representatives, planned on attending the show. Those who said they were not attending noted that the expense of the show was the biggest factor for missing out, followed by the timing. Last year's trade show took place in mid-July. This year, it starts at the end of June.

We also asked retailers if the FDA's regulation of premium cigars impacted their business. Most respondents have not yet seen a dramatic affect on their livelihood—but they're aware more changes are coming—and have noticed that a large amount of cigar manufacturers have increased prices to offset the higher cost of doing business.

Even with these hurdles, cigar retailers still find reasons to celebrate. Along with higher sales numbers this year, many retailers are pleased to report a variety of new, interested cigar smokers walking through their doors. "Lots of Millennials discovering and enjoying the cigar life," says Jeff Borysiewicz (https://www.cigaraficionado.com/articles/florida-s-grown), president of Corona Cigar Co., who owns four Florida locations in Orlando, Lake Mary and Tampa.

"There are a lot of new people just getting into cigars," says Russell Wilder, owner of Top Shelf Cigar & Tobacco Shoppe in Augusta, Georgia. He sees an expanding audience of new customers. Craig Cass, owner of four Tinder Box locations in North Carolina and one in South Carolina, says he has observed a broadening demographic of people enjoying cigars at his locations. "It is refreshing to see new faces," he says. "I find most consumers welcome education and are receptive to recommendations."

Our retailer poll indicates that today's cigar consumers have discerning tastes and are willing to spend more money on quality cigars—another good sign for tobacconists everywhere.

Besim Cukaj, owner of Besim's Fine Cigars in Southampton, New York, says that today's cigar customer is "looking for quality, and willing to spend more than they did during the past decade." Luis Molina, general manager at Habana Port Cigar Merchants, who oversees retail locations in both Metairle and Baton Rouge, Louisiana might agree with Mr. Cukaj. He says that the modern consumer is "looking for value. Price is not necessarily an issue but value is very relevant."

"Consumers are more educated than ever," says Michael Herklots, vice president of Nat Sherman International (https://www.cigaraficlonado.com/company/nat-sherman-international-inc), who oversees the Nat Sherman Townhouse in Manhattan, New York. "They make decisions with tremendors discretion." He notes that today's customers want quality and refinement. "There is clearly continued and growing interest in cigars that are balanced. Flavor is more important than strength. The days of face-melting bombs are over."

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Brian Forrester • 6 months ago

A couple of hypothesis:

- B&M are where people go to buy singles of smokes too expensive to purchase by the box, hence Padron, Ashton, and Davidoff on the list.
- 8&M tend to draw a larger crowd of the less sophisticated smokers and get steered towards a handful of brands by the tobacconist

When I go to the B&M, it's usually to try something new or something too pricey to get by the box. The vast majority of the cigars I purchase are boxes or bundles online. I know the traditional retailers hate to hear that, but when I can get a box of Melanio figurados for \$75 vs. \$17 for a single at my local shop, you'd better believe I'm buying online.

8 ^ 1 V · Reply · Share >



#### StogleDad → Brian Forrester • 6 months ago

Exactly my friend. This is accurate info, just kind of misleading. It wouldn't make sense that Davidoff was the 4th largest seller in the nation as lots of their cigars are very limited. However, the B&M is now the place for guys that want to show off for the bachelor party, needs smokes for vacation, or otherwise aren't regular cigar smokers. I rarely go at all, if I do it is for a couple singles to try something but even then a fiver online is a better investment to really try something for a minimal investment. I keep a huge collection at home and participate in online communities, and have friends that enjoy cigars. I spend probably thousands a year with online shops because with watching sales and such, I can 5-8X that cigars that I could have bought in a B&M. Plus most that I go in (not all) the guy knows less about cigars than me or talks down to me. There are one or two I would go hang out at in the Atlanta area. It's unfortunate because that is where a lot of the comradery of cigars comes from, but my porch and a beverage are quite enjoyable as well.

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Tito Colon → StogieDad • 6 months ago

The Perdomo 12yr double aged Conn. And the Sun Grown are excellent sticks in my humble opinion.

1 ^ : V · Reply · Share ›



Dennis Bedard → Brian Forrester • 5 months ago

Bingo! I smoke a lot of cigars and have my own personal favorites, none of which are on the above list. Cigar smoking is in large part a status symbol and the type of activity where anyone can live like a king (or pretend to) by spending \$10 on a so called premium cigar. Ditto the wine business. But the serious smoker knows the game and buys accordingly.

SEMPTONAUMTHINGN. Reply . Share





Rich Hudzinski → Brian Forrester • 6 months ago
Exactly. Cigar prices go up EVERY YEAR, YEAR AFTER
YEARI It's crazy! I see a cigar that cost \$6 three years ago
now at \$8!

∧ \ ✓ 1 · Reply · Share ›



CleverUserName → Rich Hudzinski • 6 months ago

I guess you don't buy gas, or food, or clothing, or insurance, etc.....

2 ^ V · Reply · Share >



Jamle Goebel Ketola • 5 months ago • edited

Funny how most of the comments are from consumers who have no Idea what sells. Hello, Padron doesn't just make 1964's...My shops are in a tourist market (20+ years) and we get a pretty good snapshot of what the country is consuming. This list is spot on! Auction sites and trading with your cheap friends does not give you a basis on what is selling in America. Perdomo is a top 4 brand for us!

2 ^ : V · Reply · Share >



SqueichQueich • 6 months ago

So ignoring all the Perdomo chatter about its position in the list, I am surprised how high it is in the list. I spoke with my local retailer about Perdomo and he said it's his best seller. So I have a question for y'all. What is the best Perdomo blend? I've smoked 4 or 5 Perdomos and I didn't really like any of them. I'd like to know what I'm missing, if anything.

2 ^ + v · Repty · Share >



Roy Thompson - SquelchQuelch - 6 months ago

I like the Perdomo Lot 23 Connecticut. One of my favorite smokes.

2 ^ { v · Reply · Share >



David Katz → Roy Thompson • 4 months ago

I first came across this smoke in Bulgaria of all places on a European vacation. I had smoked Perdomo's before but never this one. It's become one of my go to favs. Comes in a variety of vitolas and is a very reasonably priced cigar. I prefer the Maduro. Try one, you'll like it.

∧ ( ∨ • Reply • Share)



Mark E. McIntyre → SqueichQueich • 6 months ago

I have had three in my cigar life, two 10th anniversary champagnes—YUCKI And one 20th Anniversary Maduro and that's it the one I see in my local b& m spots all have dust on them

2 ^ | V · Reply · Share



Nick Jones → SqueichQueich • 6 months ago

The Perdomo Squared Churchill with the Habano wrapper used to be pretty good; as was the Perdomo Habano Petit Corona with the Habano wrapper (the Habano brand came in 3 different wrappers, one of which was billed as Habano), but both have been discontinued. These days they make mostly large ring-guage clgars (50+), none of which are remarkable, in my oplnion.

∧ \ ✓ • Reply • Share >



Raul • 6 months ago • edited

Can anyone explain how Perdomo is so high on this list, is increasely with #6 best selling brand in the country, while I don't know a single person who smokes them, they're not in any of the B&Ms I go to, and all the comments here seem just as surprised and also nobody seems to really like the few they've smoked?

A question for Greg Mottola: are these ONLY B&Ms or does the list of retailers polled also include high-volume online sellers that happen to also have a B&M presence? Maybe the heavily-discounted high-volume internet sales of cheap Perdomos to newbles accounts for a lot of this? As well as the fact that Perdomo supposedly is a huge seller, yet it is totally absent from the list of class that people are excluded for the next short in this acticle?

cigars that people are asking for, the frest chart in this article:

Y'alls gots some 'splainin to do...

3 A 1 V 1 • Reply • Share >



Leo Margul - Raul - 6 months ago

Also does CA get money from Perdomo in any way?





Tilo Cotón → Raul • 6 months ago

I think the Perdomo 12yr double aged Conn. And the Sun Grown are excellent sticks in my humble opinion.

1 A | V . Reply . Share



DaysTune Online • 6 months ago

These reviews and lists all prove one thing - to each his own. I agree with anyone saying Perdomo doesn't belong in a list at all. Hardly ever see a box in the store close to being empty and any style I've smoked leaves your mouth so dry it takes a good day to get over it. I would never even try another one if it was given to me. As much as I love tooking through a magazine like this one, and seeing what people are talking about, a clgar is like a bottle of wine or a type of beer - every palette takes the flavor of anything differently. So do the reviews really matter? Not really, I myself do not think a Padron is worth the money. They are good, but I don't think paying \$30 dollars for one smoke is worth what you get out of it. Davidoff is a luxury brand - which really just means they will always overprice their products. All of this could be proven with a blind smoke test, done across the country. You play into this status thing and before you know it, we are paying \$15 dollars for a cigar that used to only cost \$5. In real life, cigars like Nat Sherman Hobart or Baccarat Havana The Game Cigars are great smokes for a low price point. The newer JFR Lunatic is also a cigar that I think could stand up to most of those Padron or Davidoff options.

Be smart men. Don't fall for what others say. Take time to try different styles and brands (and start at the low price point) find what is pleasant to you and brings you satisfaction. That will be (your) number one cigar and that is what you want in the end.

2 2 1 Reply Share



Gregory Mottola \*\*\*: \*DaysTune Online

· 6 months ago · edited

The positions and placements of cigars you see on this list are not a matter of opinion. They are the result of a retailer survey we conduct every year. We tally the sales data given to us by retailers and report the numbers.

2 ^ · · Reply · Share ›



kkh → DaysTune Online • 5 months ago

I smoke a lot of Padrons as they are some of my all time favorites. Only a few times have I paid \$25 to \$30 for one Padron. Maybe 3 or 4 times for a special occasion stick, in almost 20 years of cigar smoking. For example, I just picked up a 5er of of '64 Diplos for under \$65. And even the ultrafabulous F75 is \$21 retail and even less on Auctioneer. There a LOT of tasty Padrons out there, especially online, for way less than 30 bucks. Just sayin'.

But otherwise, I agree w your comment; find what you like, SEMPT TOX NOTE: they the "hype". Except that I'm not a "men". (1)

CHEERS

∧ : ∨ • Reply • Share >



lightga • 6 months ago

Davidoff at #4. That brand is to pricey for my budget.

1 ^ V · Reply · Share >



Rich Hudzinski - 6 months ago

WOW, I couldn't believe the Robusto was the number one selling size. Never like Robustos unless they are 56 ring or higher.

1 ^ | V 1 · Reply · Share



Vance Mac → Rich Hudzlnskl • 6 months ago

I can. I have a ton of toro's in my boxes, but seem to rarely have to time for one of them, especially if I'm smoking with someone (who usually isn't big into cigar smoking). It always ends up being a robusto or similar. Just a really nice size for an enjoyable smoking, and then carry on with life. 2 ^ | v · Reply · Share >



kkh - Rich Hudzinski • 5 months ago

I probably buy Robustos more than anything, unless there are Coronas, Corona Gordas or other small ring gauges available. This trend of huge ring gauges is just NOT for me. Small ring gauges FTW!



Leo Margul • 6 months ago

Perdomo at No. 6? Not sure I believe that number.



Jorge A. Ahued -> Leo Margul - 6 months ago - edited

I don't understand what it is that you don't believe? How do you know how many cigars Perdomo sells? I know I can't keep it in stock In my store, it sells fantastically well, but apparently you're the expert. And on top of that they don't advertise on CA. 3 ^ Y Reply · Share



Leo Margul -> Jorge A. Ahued - 6 months ago Lol. Maybe they only polled Florida guys.

3 ^ | v 1 · Reply · Share ›



Jorge A. Ahued A Leo Margui • 6 months ago

I'm in Texas, we don't talk about stuff we don't know anything about, we listen and learn, use that as good advice, learn to keep your mouth shut and not make a fool of vourself.

3 A | V 1 Reply • Share)



Daniel Caldwell - Jorge A. Ahued · 6 months ago · edited

Ha, thanks for saying what we're all thinking Jorge, I'm also a Texan! 1 ^ ( v 2 · Reply · Share ›



Ana Cuenca → Jorge A. Ahued

5 months ago

Good! My respect Jorge!

∧ [ ∨ · Reply · Share ›



Nick Jones → Leo Margul • 6 months ago

You'd better believe It, sister! Perdomos sell like crazy in my B&M, especially the Fresco line, which is a budget smoke.

5 A | V 1 · Reply · Share >



SKRIPTOCAGUE AND Rich Hudzinski - Nick Jones • 6 months ago

I can't see that. Perdomo makes some of the finest Connecticut wrapped cigars out there. And the 20th Anniversary Maduro is excellent.

2 ^ / V · Reply · Share >



Brad Carter → Leo Margul • 5 months ago

Perdomo is extremely popular. They do not push sticks like say Arturo Fuente or Padron, but they have a big following. Rarely do I grab one, but to change it up I will. I never am overwhelmed with their flavor profile, but they make quality

sticks. I'm not shocked Rocky Patel made the list, but I have always wondered why they have the following they do.

Everything I have had(and I have given them more chances than most) is just ridiculous. Its always something with a RP for me anyway. When I can get a Fuente, a thousand series Padron, E.P.C., My Father or Ollva at the same price point in most offerings. One I have grown quite fond of the past year are the La Flor Dominicana sticks. The quality is top shelf.. for the life of me I can't understand why more people do not smoke them, Unbelievable quality and dang tasty. But the quality of their leaves and rollers are as good as anything in the world.

∧ : ∨ • Reply • Share >



trghudson . → Leo Margul • 6 months ago

Too high or too low?

∧ [ ✓ • Reply • Share )



Leo Margul → trghudson . • 6 months ago

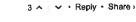
Lof. Wayyy high, unless you believe they're outselling the likes of Davidoff and Ashton and Fuente. The Perdomo name doesn't belong in that list. I smell a \$ placement...

4 ^ : v 2 · Reply · Share >



Jeff Mouttet → Leo Margul • 6 months ago

They sell like hotcakes for me.





Daniel Caldwell - Jeff Mouttel

Perdomo is really popular among a lot of new smokers.

∧ ∨ • Reply • Share ›



John Allen → Lee Margul • 6 months ago

Perdomo is not listed above any of the brands you just named so you make a false argument. Plus, Perdomo does not advertise with CA, so what money placement are you implying?

2 A V · Reply · Share ›



This comment was deleted,



John Allen 🖈 Guest • 6 months ago

My father, a wise man, always told me not to engage in a battle of wits with an unarmed man. So, good day, sir.

2 A Reply · Share ›



kkh -> John Allen • 5 months ago

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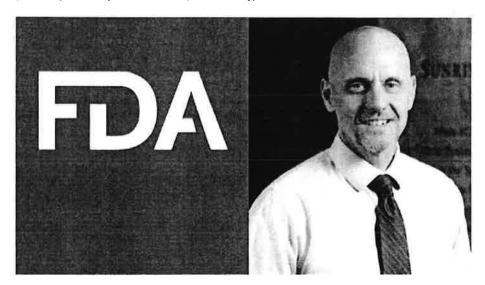
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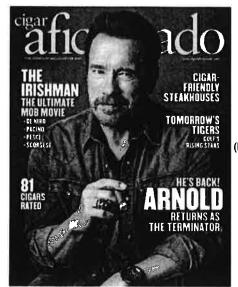


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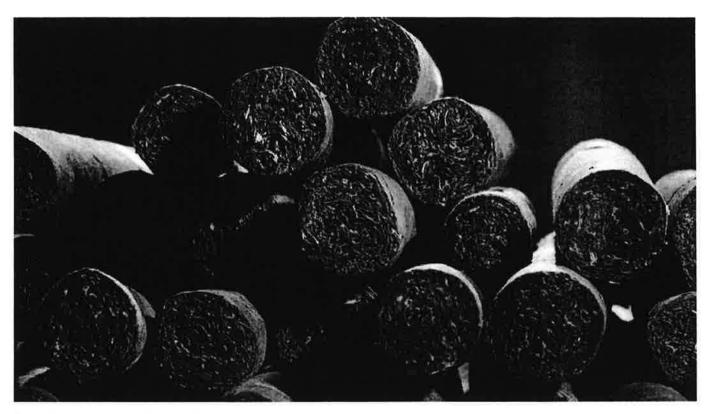


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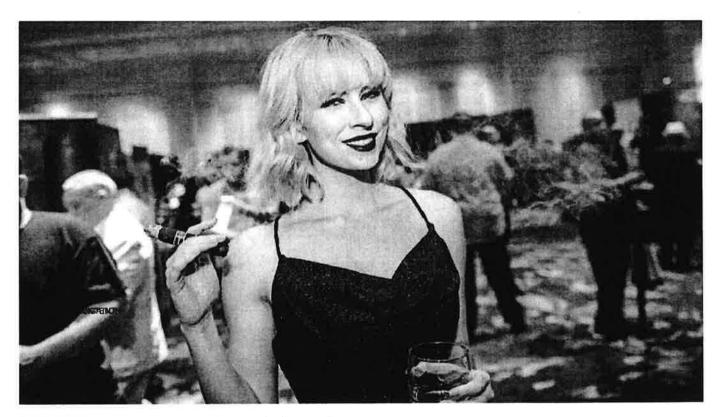


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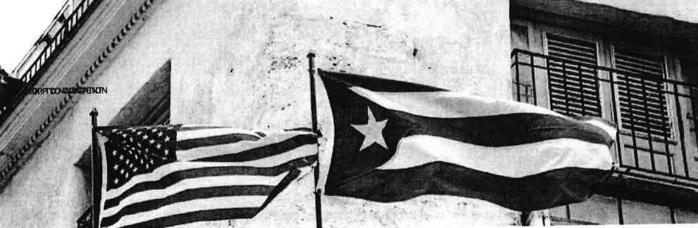
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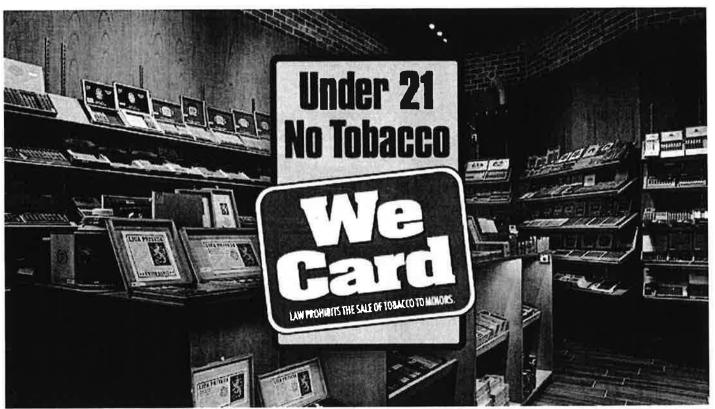


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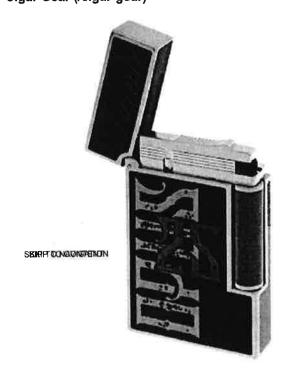


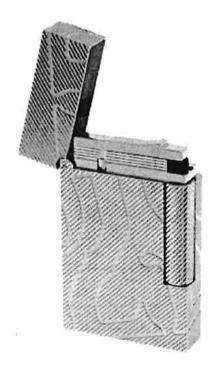
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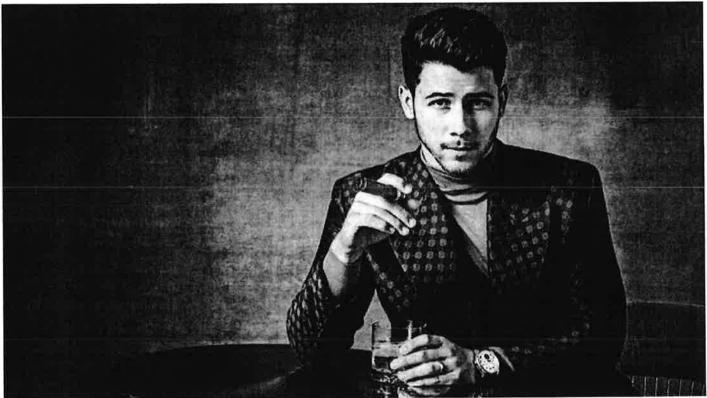


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### The Difference between a Cuban Cohiba Cigar and Dominican Cohiba Cigar

July 11, 2018

When thinking of Cuban cigars, there is one name that pops into the head of all seasoned Habanos cigar smokers. That name is Cohiba. For half a century, Cuban Cohibas have been among the highest rated and most revered Cuban cigar brands on the market. For being the most popular and well-known Cuban cigar in the world, Cohiba has a quite unique past.

Unlike other Cuban cigar brands such as Romeo y Julieta or Partagas, the start of the Cuban Cohiba brand was relatively late. In fact, it is one of the first Cuban cigars created after the Cuban revolution. A local cigar roller was crafting hand-rolled Cuban cigars in his house and selling them to Fidel Castro's bodyguard. One day he gave one of these premium Cuban cigars to Fidel, who instantly fell in love with the blend. He turned this man's house into the El Laguito Factory, where Cohiba Cuban Cigars are still made today. For many years the Cuban Cohiba was made only for Fidel Castro and a few close friends who were also Habanos aficionados.

In 1968, the state sponsored Cubatobaco formerly launched the brand onto the world cigar market. Cohiba comes from the ancient Taino word for tobacco. These cigars were to be produced on a limited scale and to be of higher quality than any other Cuban cigar. In the early 1980s, Cuba really made a push to make the Cuban Cohiba a full production line, making it more readily available in the world's Cuban cigar stores.

With the Cuban Cohiba being completely under Cuban control with no immediate copyright or trademark problems, in 1978, the name was taken by General Cigar and registered for distribution in the United States. Calling them the Red Dot Cohibas and using exclusively Dominican tobacco, The Dominican Cohiba brand became immensely popular during the boom of the 1990s and remains a top of the line Dominican cigar even to this day.

The only real difference between the Cuban and Dominican Cohiba cigar is just where the tobacco is rolled. They are both high quality, premium cigars. If you live in the US, there are no Cuban Cigars near you, however, you can go to JR Cigars right now to enjoy the Dominican version of the legendary Cohiba Cigar. While you are there, check out the Nicaraguan Cohiba cigars too!

Hear from our cigar aficionado and his break down the differences of the two types origins:

The Difference between a Cuban Cohiba Cigar a...



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Rob · a year ago

When I was in the D.R. a few years back, I bought a cigar from one of the peddlers roaming the beaches. I distinctly remember it having the yellowish-orange label. I remember the peddler braggling about it being a "real Cuban". Now, I don't know if it was truly a Cuban Cohiba, or it was a fraud. What I DO know is, it was one of the most amazing things I have ever tasted. At that point, I was convinced it was authentic. Fast forward to today. In just a few short weeks, I will be visiting Cuba. I hope to bring enough cash with me to bring home a variety of genuine Cuban cigars, since I am the only person I know who will have traveled to Cuba. I DO have a few cigar enthusiasts in my Inner circle though, so most of what I bring home will be for them - not that they have asked. Great articleI BTW - I'm a cigar rookie, but will be purchasing my first humidor before my trip

∧ ; ✓ • Reply • Share ›



Iroc Guns → Rob • 3 months ago

100% a fake if bought from a beach peddler in DR.

In Cuba, buy only from LCDH stores - almost anything else will be a fake.

Have a fantastic trlp!

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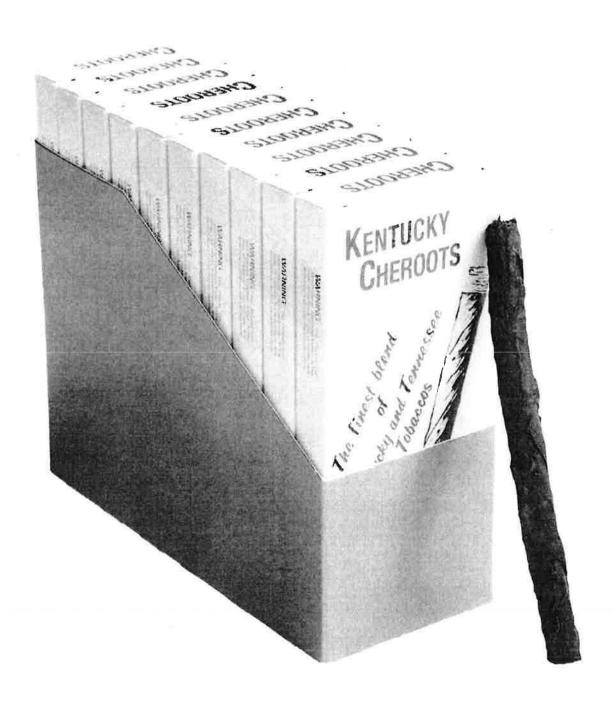
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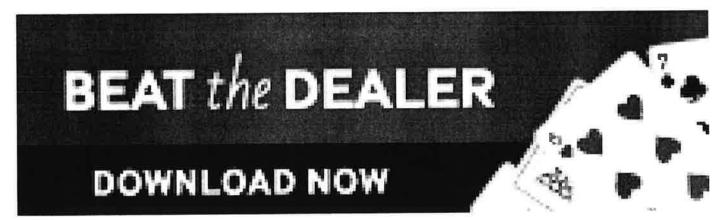
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# The Difference Between a Cuban Partagas Cigar and Dominican Partagas Cigar

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Very few premium brands in the world today, have the mystique and allure of the famous Cuban Partagas cigar. A victim of the Cuban embargo of 1962, this legendary brand can easily be found in cigar stores throughout Europe and Central America, but unfortunately, they are still not legally sold here in the United States.

The original Cuban Partagas cigars are among the oldest brands of cigars still in existence. Still produced at No. 520 Industria Street, just behind the Capitol building, in the heart of the city, the factory was opened in 1845 by Don Jaime Partagas and it has been making the cigars that bear his name ever since. Not only is this landmark factory still thriving, but it has also become a top tourist destination for cigar smokers around the globe, as it still offers daily tours of the facility.

A Cuban Partagas cigar is immediately recognizable by its deep, earthy, and nutty tones, presented with a full-bodied strength profile that provides a creamy smooth texture on the palate. The character of its blend springs from a selection of 100% Cuban wrapper, binder, and filler tobaccos grown in the famous Vuelta Abajo region that has been carefully chosen for their unmistakable richness of flavor and unique sweet-smelling aroma.

Today, the name is used today by two independent and competing entities, one produced at this legendary factory mentioned above, and the other, containing no Cuban tobacco, produced in the Dominican Republic for the prestigious General Cigar Company.

Following the Cuban Revolution, legendary cigarmaker Ramón Cifuentes opted to emigrate to the United States rather than work in this now state-owned factory. In 1974, the Cifuentes family made a deal with the General Cigar Co. to manufacture Partagas cigars in Jamaica, and the first non-Cuban Partagas cigars hit the US market in 1977. General later shifted production to its factory in the Dominican Republic, where they're still made with aged Dominican and Mexican filler tobaccos, Mexican binders, and savory wrappers grown in the Cameroon region of Africa.

The Dominican Partagas Cigar is steeped in Cuban tradition and offers the cigar aficionado a premium handmade smoke with a surprisingly similar taste to its heralded Cuban counterpart. Slightly mellower than the original blend, although hardly noticeable, the medium-bodied Dominican Partagas cigar is rife with mouthwatering layers of leather, sweet cocoa, nuts, some earthiness, and a toasty tobacco sweetness throughout.

Dominican Partagas cigars are among the best-selling premium cigars in the United States today, and General has added many line extensions to the storied brand, allowing you to find the perfect smoke that rivals the amazing taste of the Cuban Partagas Cigar without having to leave the country.

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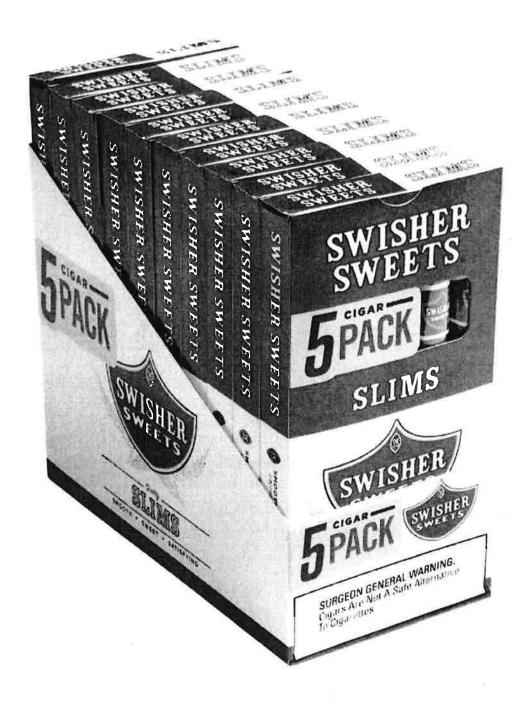
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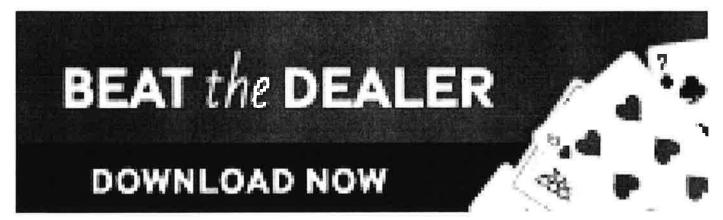
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